



# ZONING CHAPTER 198

FROM THE

CODE  
OF THE  
TOWN  
OF

FAIRHAVEN

Revised through May 4, 2013

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## Chapter 198

### ZONING

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HISTORY: Adopted by the Special Town Meeting of the Town of Fairhaven 6-14-1966 By Art. 10. Amendments noted where applicable.

## FAIRHAVEN CODE

### GENERAL REFERENCES

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## ARTICLE 1

### Authority; Purpose; Administration and Enforcement

[Amended 3-23-1968 ATM by Art. 58; 4-4-1970 ATM by Art. 60; 3-15-1973 ATM by Art. 74;  
2-9-1978 STM by Art. 2; 5-3-1986 STM by Art. 6; 5-7-1988 ATM by Art. 10; 5-9-1989 ATM by  
Art. 20; 5-4-1991 ATM by Art. 24]

#### § 198-1. Authority.

This chapter is adopted pursuant to the authority granted by Chapter 40A of the General Laws of the Commonwealth of Massachusetts and any amendments thereof.

#### § 198-2. Purpose

This chapter is enacted for the following purposes:

- A. To promote the health, safety, convenience and general welfare of the inhabitants of the Town of Fairhaven.
- B. To lessen the danger from fire, flood, panic and other natural or manmade disasters.
- C. To improve and beautify the town.
- D. To prevent overcrowding of land.
- E. To avoid undue concentration of population.
- F. To facilitate the adequate needs of water, water supply, drainage, sewerage, schools, parks, open space and other public requirements.
- G. To conserve the value of land and buildings, including the conservation of natural resources and the prevention of blight and pollution of the environment.
- H. To encourage the most appropriate use of land throughout the town.
- I. To preserve and increase amenities by the promulgation of the regulations to fulfill said objectives.

#### § 198-3. Administration.

This chapter shall be administered by the Building Commissioner. No building shall be erected, structurally or externally altered and no use of land or a building shall be started or changed without a building permit having been issued by the Building Commissioner. No premises shall be equipped or used without an occupancy permit issued by the Building Commissioner. No such permits shall be issued for construction or use in violation of any provisions of this chapter.

#### § 198-4. Enforcement.

The Building Commissioner may institute appropriate legal proceedings to enforce the provisions of this chapter or to restrain by injunction any violation thereof, or both, and shall institute and take any and all such action as may be necessary to enforce full compliance with any and all of the provisions of this chapter.

#### § 198-5. Violations and Penalties.

Any person, business or other legal entity violating any provision of this chapter, any conditions under which a permit is issued or any decision rendered by the Zoning Board of Appeals or other special permit granting authority, may be fined not more than \$300.00 for each offense. Each day that such violation continues shall constitute a separate offense.

### **§ 198-6. Planning Board.**

The Fairhaven Planning Board is hereby designated as one of the special permit granting authorities (SPGA) under the provisions of MGL c.40A, § 9. (See § 198-15C of this chapter).

### **§ 198-7. Board of Appeals.**

- A. There is hereby established a Zoning Board of Appeals of five members and four associate members appointed by the Selectmen, as provided in MGL c.40A, which shall act on all matters within its jurisdiction under this chapter in the manner prescribed in Chapter 40A of the General Laws. The Board established hereunder shall act as the permit granting authority for appeals under MGL c.40A, §§ 8 and 10, and one of the special permit granting authorities as provided in MGL c. 40A, § 9. This subsection should not be construed as to limit any of the authority of the Zoning Board of Appeals under any other section of Chapter 40A.
- B. An appeal to the Zoning Board of Appeals may be taken by any person aggrieved by reason of his/her inability to obtain a permit or enforcement action from the Fairhaven Building Commissioner for reasons in violation of the provisions of Chapter 40A or this Chapter 198, Zoning, as provided under MGL c.40A, § 8. An appeal to the Zoning Board of Appeals may also be taken by the Regional Planning Agency for the Town of Fairhaven, an officer or board of the Town of Fairhaven or an abutting city or town of Fairhaven who is aggrieved by an order or decision of the Fairhaven Building Commissioner pertaining to the provisions of Chapter 40A, or this Chapter 198, Zoning, as prescribed under MGL c.40A, § 8.
- C. The Zoning Board of Appeals shall not hear an appeal from any decision made by another special permit granting authority as established under MGL c.40A, § 9. Such appeals shall be made to Superior Court as required under MGL c.40A, § 17. The Zoning Board of Appeals shall hold public hearings in accordance with the provisions of Chapter 40A on all appeals and petitions brought before it.

### **§ 198-8. Special Permit**

- A. A special permit issued by a special permit granting authority (SPGA) as provided for in this chapter shall be required for certain uses permitted in specified districts. Such special permits may be issued for specific uses, which are in harmony with the general purpose and intent of this chapter and shall be subject to additional conditions, safeguards and limitations on time, space and use as the designated SPGA may reasonably require. A special permit shall not be issued by an SPGA for an excluded or prohibited use as defined in this chapter. The SPGA shall take into account the general purpose and intent of this chapter and, in order to preserve the community values, may impose conditions and safeguards deemed necessary to protect the surrounding neighborhood, in addition to the applicable requirements of this chapter, and shall not issue a special permit which shall appear to be detrimental to the public interest because:
  - (1) It appears that the intent of the performance standards of § 198-24 or other requirements of this chapter cannot be or will not be met.
  - (2) Traffic generated or patterns of access and egress would cause congestion, hazard or substantial change in established neighborhood character.
  - (3) The continued operation of or development of adjacent uses as permitted by this chapter would be adversely affected by the nature of the proposed use.
  - (4) A nuisance or hazard would be created.
  - (5) The specific proposal derogates from the intent and purpose of the chapter.
- B. No Special Permit shall be issued except following a Public Hearing within 65 days after filing of an application with the granting authority. Failure of the special permit granting authority to act within 90 days following said public hearing shall be deemed a grant of the application. A special permit granted under this section shall lapse if substantial use thereof or construction has not begun within two years, except for good cause.

### **§ 198-9. Variances.**

The Zoning Board of Appeals may authorize upon appeal, or upon petition in cases where dimensional modifications are sought with respect to a particular parcel of land or to an existing building thereon, a variance from the terms of this chapter, where, owing to conditions specifically affecting each parcel or such building, but not affecting generally the zoning district in which it is located, a literal enforcement of the provisions of this chapter would involve substantial hardship, financial or otherwise, to the appellant and where desirable relief may be granted without nullifying or substantially derogating from the intent or purpose of this chapter, but not otherwise. The Zoning Board of Appeals shall hold a public hearing in accordance with the provisions of Chapter 40A on all variance applications brought before it.

### **§ 198-10. Amendments.**

This chapter may from time to time be changed by amendment, addition or repeal by the Town Meeting in the manner provided in MGL c.40A, § 5, and any amendments therein.

### **§ 198-11. Validity**

The invalidity of any section or provision of this chapter shall not invalidate any other section or provision thereof.

### **§ 198-12. Applicability of greater restrictions**

Where the application of this chapter imposes greater restrictions than those imposed by any other regulations, permits, restrictions, easements, covenants or agreements, the provisions of this chapter shall control.

### **§ 198-13. When effective**

This chapter shall take effect when, following adoption by the town, it is approved by the Attorney General of the Commonwealth of Massachusetts and is published or posted as provided by law. Upon its effective date, it shall supersede the Zoning Bylaw and all amendments to it previously in effect.

## **Article II Use and Intensity Regulations**

### **§ 198-14. Establishment of districts.**

- A. [Amended 3-28-1970 ATM by Art. 56; 5-15-1976 ATM by Art. 69; 10-7-1982 STM by Art. 14; 5-10-1988 ATM by Art. 11; 5-6-1995 ATM by Art. 24; 5-3-1997 STM by Art. 15; 5-2-1998 STM by Art. 26; 5-1-1999 ATM by Art. 8; 5-3-2008 ATM by Art. 50; 5-1-2010 ATM by Art. 32; 5-7-11 STM by Art. 10] The Town of Fairhaven is hereby divided into the following districts:

|  |     |
|--|-----|
| Rural Residence Districts  | RR  |
| Single Residence Districts   | RA  |
| General Residence Districts  | RB  |
| Apartment/Multifamily Districts  | RC  |
| Park Districts   | P   |
| Business Districts   | B   |
| Industrial Districts   | I   |
| Agricultural Districts   | AG  |
| Nasketucket Overlay District   | NRB |
| Floodplain Districts<br>(Refer to § 198-28)                            | FP  |
| Mixed Use District [Added 5-2-1998<br>STM by Art. 26]                  | MU  |
| Wetland Resource Protection District<br>[Added 5-1-1999 ATM by Art. 8] | WRP |

- B. The boundaries of these districts are defined and bounded on the map accompanying this chapter and on file with the Clerk of the Town of Fairhaven entitled “Town of Fairhaven Zoning Map” as amended through May 7, 2011. That map, as clarified through measurements identified on plats on file with the Town Clerk’s office, all explanatory matter thereon and all subsequent amendments to it are hereby made part of this chapter.<sup>1</sup>
- C. Except when labeled to the contrary, boundary or dimension lines shown approximately following or terminating at streets, railroad or utility easement, center or layout lines, boundary or lot lines, or the channel of a stream shall be construed to be actually at those lines; when shown approximately parallel, perpendicular or radial to such lines shall be construed to be actually parallel, perpendicular or radial thereto. When not locatable in any other way, boundaries may be determined by scale from the map.
- D. Where a district boundary line divides any lot existing at the time such line is adopted, the regulations for any district in which the lot has frontage on a street may be extended not more than 20 feet into the other districts.

## **§ 198-15. Use regulations [Amended 5-4-1991 ATM by Art. 24]**

- A. No building or structure shall be erected or used and no premises shall be used except as set forth in the Use Regulation Schedule. Symbols employed shall mean the following.
  - Y A permitted use
  - N An excluded use
  - A A use authorized under special permit as provided for in §§ 198-6, 198-7, 198-8, 198-15C and 198-16 and as otherwise specified within this chapter.
- B. Where an activity might be classified under more than one of the following uses, the more specific classification shall determine permissibility; if equally specific, the more restrictive shall govern.
- C. Special Permit uses.
  - (1) The Planning Board shall be the SPGA for all use allowed by special permits within the Apartment/Multifamily [RC], Park [P], Wetland Resource Protection District [WRP], Business [B], Mixed Use (MU), Industrial [I] Districts and as otherwise specified in this bylaw. The Zoning Board of Appeals shall be the SPGA for all uses allowed by special permits within the Rural Residence [RR], Single Residence [RA], General Residence [RB], Agricultural [AG] Districts and as otherwise specified in this bylaw. **[Added 5-6-2006 ATM by Art. 9]**
  - (2) Where any proposed use, or expansion of a use otherwise permitted [Y] or authorized [A] in an Apartment/Multifamily [RC], Park [P], Wetland Resource Protection District [WRP], Business [B], or Industrial [I] District results in a requirement of a total of five (5) or more parking spaces for the previously existing and new demand combined pursuant to the provisions of § 198-27 of this chapter, such use shall be deemed authorized by special permit granted by the Planning Board pursuant to the provisions of § 198-29 of this chapter upon review by the Planning Board of the site development plan. **[Added 5-4-1991 ATM by Art. 24; amended 12-10-1992 STM by Art. 1; amended 5-1-1999 ATM by Art. 8; amended 2-11-2004 STM by Art. 15, amended 5-6-2006 ATM by Art. 9]**
  - (3) The provisions of § 198-29 shall apply to a change of use, to new construction and to the expansion of the gross floor area of a building existing before January 1, 1998 in the Mixed Use (MU) District as provided in § 198-27B(4). **[Added 5-2-1998 STM by Art. 26; amended 2-11-2004 STM by Art. 15, amended 5-6-2006 ATM by Art. 9]**
- D. Wetland Resource Protection District. **[Added 5-1-1999 ATM by Art. 8, amended 5-6-2006 ATM by Art. 9]**
  - (1) The Purpose of the Wetland Resource Protection District is to:
    - (a) Promote development that is compatible with the sensitive environmental features of the designated Wetland Resource Protection areas.
    - (b) To promote increased protection for wetland resource areas in town.

<sup>1</sup> Editor’s note: The Zoning Map is included in a pocket at the end of this volume.

## **§ 198-16. Use Regulation Schedule**

[Amended 3-18-1967 STM by Art. 6; 3-25-1967 ATM by Art. 54; 3-25-1967 ATM by Art. 56; 3-23-1968 ATM by Art. 58; 3-22-1969 ATM by Art. 56; 3-28-1970 ATM by Art. 56; 3-28-1970 ATM by Art. 57; 3-28-1970 ATM by Art. 58; 9-14-1972 STM by Art. 19; 3-15-1973 ATM by Art. 76; 3-15-1973 ATM by Art. 78; 6-20-1974 STM by Art. 7; 4-16-1975 ATM by Art. 57; 5-15-1976 ATM by Art. 69; 5-18-1976 ATM by Art. 68; 1-22-1977 STM by Art. 6; 5-14-1977 ATM by Art. 42; 5-13-1978 ATM by Art. 54; 5-13-1978 ATM by Art. 55; 5-10-1988 ATM by Art. 11; 5-9-1989 ATM by Art. 19; 5-4-1991 ATM by Art. 26; 12-10 1992 STM by Art. 1; 5-1-1993 STM by Art. 7; 5-6-1995 ATM by Art. 24, 11-6-1997 STM by Art. 20, 11-6-1997 STM by Art. 34, 11-6-1997 STM by Art. 35, 5-2-1998 STM; by Art. 26, 5-2-1998 STM; by Art. 29, 5-6-1998 ATM; by Art. 18, 5-8-1998 ATM by Art. 19, 5-8-1998 STM by Art. 28; 11-23-1998 STM by Art. 22; 11-23-1998 STM by Art. 25, 5-1-1999 ATM by Art. 8; 5-5-2001 ATM by Art. 11, 5-1-2004 STM by Art. 11, 5-6-2006 ATM by ART. 8]



### Use Regulation Schedule

| Activity or Use                                | RR & RA         | District |    | P              | B               | I               | AG | MU <sup>14</sup> | WRP <sup>16</sup> |
|--|-----------------|----------|----|----------------|-----------------|-----------------|----|------------------|-------------------|
|  |                 | RB       | RC |                |                 |                 |    |                  |                   |
| <u>AGRICULTURAL USES</u>                       |                 |          |    |                |                 |                 |    |                  |                   |
| Farm without Livestock                         | Y               | Y        | Y  | Y              | Y               | Y               | Y  | Y                | Y                 |
| GREEN HOUSE                                    |                 |          |    |                |                 |                 |    |                  |                   |
| With retail sales                              |                 |          |    |                |                 |                 |    |                  |                   |
| Site under 5 Acres                             | A               | A        | A  | A              | Y               | Y               | Y  | N                | N                 |
| Site Over 5 Acres                              | Y               | Y        | Y  | Y              | Y               | Y               | Y  | Y                | Y                 |
| Wholesale only                                 |                 |          |    |                |                 |                 |    |                  |                   |
| Site Under 5 Acres                             | A               | A        | A  | A              | Y               | Y               | Y  | N                | N                 |
| Site Over 5 Acres                              | Y               | Y        | Y  | Y              | Y               | Y               | Y  | Y                | Y                 |
| Roadside Stand (temporary)                     | A               | A        | A  | A              | Y               | Y               | Y  | N                | N                 |
| Roadside Stand (permanent)                     | A               | A        | A  | N              | Y               | Y               | Y  | N                | N                 |
| Livestock Raising***                           |                 |          |    |                |                 |                 |    |                  |                   |
| Site Under 5 Acres                             | Y*              | A        | N  | N              | N               | Y               | Y  | N                | N <sup>a</sup>    |
| Site Over 5 Acres                              | Y               | Y        | Y  | Y              | Y               | Y               | Y  | Y                | Y <sup>a</sup>    |
| <u>COMMERCIAL USES</u>                         |                 |          |    |                |                 |                 |    |                  |                   |
| Animal Kennel or Hospital                      | N**             | N        | N  | N              | A               | A               | A  | N                | N                 |
| Business, Professional Office                  | N               | N        | N  | N              | Y               | Y               | N  | Y                | N                 |
| Funeral Home                                   | N               | N        | N  | N              | A               | A               | N  | A                | N                 |
| Auto, Boat sales, rental, service <sup>x</sup> | N               | N        | N  | N              | Y               | Y               | N  | N                | N                 |
| Printing Shop                                  | N               | N        | N  | N              | Y               | Y               | N  | A                | N                 |
| Bank   | N               | N        | N  | N              | Y               | Y               | N  | Y                | N                 |
| Restaurant                                     | N               | N        | N  | N <sup>2</sup> | Y               | Y               | N  | Y                | A                 |
| Retail sales or service, <sup>x</sup>          | N               | N        | N  | N              | Y               | Y               | N  | Y                | A <sup>b</sup>    |
| Wholesaling without storage                    | N               | N        | N  | N              | Y               | Y               | N  | A                | N                 |
| Wholesaling with storage                       | N               | N        | N  | N              | A               | Y               | N  | N                | N                 |
| Non-accessory signs <sup>1</sup>               | N               | N        | N  | N              | Y               | Y               | N  | N                | N                 |
| Launderettes                                   | N               | N        | N  | N              | Y               | Y               | N  | A                | N                 |
| Limousine service                              | A               | A        | N  | N              | Y               | Y               | A  | N                | N                 |
| Drive-through Window                           | N               | N        | N  | N              | A <sup>xx</sup> | A <sup>xx</sup> | N  | N                | N                 |
| Sexually oriented business <sup>xxx</sup>      |                 |          |    |                |                 |                 |    |                  |                   |
| [Added 11-23-1998 STM by Art 25]               |                 |          |    |                |                 |                 |    |                  |                   |
| Adult Bookstore <sup>xxx</sup>                 | N               | N        | N  | N              | A               | A               | N  | N                | N                 |
| Adult Paraphernalia Store <sup>xxx</sup>       | N               | N        | N  | N              | N               | A               | N  | N                | N                 |
| Adult Video Store <sup>xxx</sup>               |                 |          |    |                |                 |                 |    |                  |                   |
| With Preview Booths <sup>xxx</sup>             | N               | N        | N  | N              | N               | A               | N  | N                | N                 |
| Without Preview Booths <sup>xxx</sup>          | N               | N        | N  | N              | A               | A               | N  | N                | N                 |
| Adult Motion Picture Theater <sup>xxx</sup>    | N               | N        | N  | N              | N               | A               | N  | N                | N                 |
| Adult Motion Picture Arcade <sup>xxx</sup>     | N               | N        | N  | N              | N               | A               | N  | N                | N                 |
| Adult Cabaret <sup>xxx</sup>                   | N               | N        | N  | N              | N               | A               | N  | N                | N                 |
| Adult Motel <sup>xxx</sup>                     | N               | N        | N  | N              | N               | A               | N  | N                | N                 |
| Adult Theater <sup>xxx</sup>                   | N               | N        | N  | N              | N               | A               | N  | N                | N                 |
| Nude Model Studio <sup>xxx</sup>               | N               | N        | N  | N              | N               | A               | N  | N                | N                 |
| Sexual Encounter Center <sup>xxx</sup>         | N               | N        | N  | N              | N               | A               | N  | N                | N                 |
| Museum   | A               | A        | A  | A              | A               | A               | A  | A                | A                 |
| Conference meeting/facility                    | N               | N        | N  | N              | Y               | Y               | N  | A                | A                 |
| Body Art Establishment                         | N               | N        | N  | N              | A <sup>19</sup> | A <sup>19</sup> | N  | N                | N                 |
| [Added 5-5-2001 ATM by Art 11]                 |                 |          |    |                |                 |                 |    |                  |                   |
| Wind Facility – Utility-Scale                  | A               | A        | A  | A              | A               | A               | A  | N                | A                 |
| Solar Photovoltaic Energy Facilities (SPEF)    |                 |          |    |                |                 |                 |    |                  |                   |
| Large Scale Ground-Mounted                     | A <sup>20</sup> | N        | N  | N              | A               | A               | A  | N                | A                 |

### Use Regulation Schedule

| Activity or Use                             | RR & RA | District |    |   | P | B | I | AG | MU <sup>14</sup> | WRP <sup>16</sup> |
|---|---------|----------|----|---|---|---|---|----|------------------|-------------------|
|   |         | RB       | RC |   |   |   |   |    |                  |                   |
| <u>INDUSTRIAL USES</u>                      |         |          |    |   |   |   |   |    |                  |                   |
| Manufacturing, processing, research         | N       | N        | N  | N | N | N | Y | N  | N                | N                 |
| Bulk storage                                | N       | N        | N  | N | N | N | Y | N  | N                | N                 |
| Contractor's yard                           | N       | N        | N  | N | A | Y | N | N  | N                | N                 |
| Earth removal                               | A       | A        | A  | A | A | A | A | N  | N                | N                 |
| Junk yard                                   | N       | N        | N  | N | N | N | A | N  | N                | N                 |
| Transportation terminal                     | N       | N        | N  | N | A | Y | N | N  | N                | N                 |
| Warehouses                                  | N       | N        | N  | N | N | N | Y | N  | N                | N                 |
| Radio transmission                          | N       | N        | N  | N | A | Y | A | N  | N                | N                 |
| Steam laundry or dry-cleaning plant         | N       | N        | N  | N | A | Y | N | N  | N                | N                 |
| Water towers and reservoirs                 | Y       | Y        | Y  | Y | Y | Y | Y | N  | N                | N                 |
| <u>INSTITUTIONAL USES</u>                   |         |          |    |   |   |   |   |    |                  |                   |
| Municipal use                               | Y       | Y        | Y  | Y | Y | Y | Y | Y  | Y                | Y                 |
| Religious use                               | Y       | Y        | Y  | Y | Y | Y | Y | Y  | Y                | Y                 |
| Nursery school/pre-school                   | Y       | Y        | Y  | Y | Y | Y | Y | Y  | Y                | Y                 |
| Other commercial schools                    | A       | A        | A  | A | Y | Y | A | A  | Y                | Y                 |
| Non-Profit Corporation Educational Uses     | Y       | Y        | Y  | Y | Y | Y | Y | Y  | Y                | Y                 |
| Religious Organization Educational Uses     | Y       | Y        | Y  | Y | Y | Y | Y | Y  | Y                | Y                 |
| Other schools                               | Y       | Y        | Y  | Y | Y | Y | A | Y  | Y                | Y                 |
| Cemetery <sup>3</sup>                       | Y       | Y        | Y  | Y | Y | Y | N | N  | N                | N                 |
| Crematoria <sup>15</sup>                    | A       | A        | A  | A | A | A | A | N  | N                | N                 |
| Hospital                                    | A       | A        | A  | A | N | N | N | N  | N                | N                 |
| Nursing, convalescent, rest home            | A       | A        | A  | A | A | A | N | A  | A                | A                 |
| Philanthropic institutions                  | A       | A        | A  | A | A | A | N | A  | A                | A                 |
| Public utility with service area            | N       | N        | N  | N | N | A | A | N  | N                | N                 |
| Public utility without service area         | N       | A        | A  | A | A | A | A | N  | N                | N                 |
| Club or lodge <sup>4</sup>                  | A       | A        | A  | A | Y | Y | N | A  | Y                | Y                 |
| Passenger station                           | Y       | Y        | Y  | Y | Y | Y | N | A  | N                | N                 |
| Assisted Living Residence                   | A       | A        | A  | N | A | N | N | A  | A                | A                 |
| Artist Studio or Gallery                    | N       | N        | N  | N | Y | Y | N | A  | A                | A                 |
| Charter School for the Arts                 | A       | A        | A  | A | A | A | A | A  | A                | A                 |
| Museum                                      | A       | A        | A  | A | A | A | A | A  | A                | A                 |
| <u>RECREATIONAL USE</u>                     |         |          |    |   |   |   |   |    |                  |                   |
| Boatyard                                    | N       | N        | N  | N | Y | Y | N | A  | N                | N                 |
| Camping, commercial <sup>10</sup>           | N       | N        | N  | A | N | N | N | N  | N                | N                 |
| Camping, supervised                         | Y       | Y        | Y  | Y | Y | Y | N | N  | N                | N                 |
| Golf course                                 | N       | N        | N  | Y | Y | Y | Y | N  | N                | N                 |
| Indoor commercial recreation                | N       | N        | N  | A | A | A | N | A  | N                | N                 |
| Non profit indoor recreation <sup>13</sup>  | A       | A        | A  | A | A | A | A | A  | N                | N                 |
| Outdoor commercial recreation <sup>5</sup>  | N       | N        | N  | A | A | A | N | A  | A                | A                 |
| Non profit outdoor recreation <sup>13</sup> | A       | A        | A  | A | A | A | A | A  | A                | A                 |
| Sportsman's club game preserve              | Y       | Y        | Y  | Y | Y | Y | Y | N  | Y                | Y                 |
| Public stables                              | N       | N        | N  | Y | Y | Y | N | N  | Y                | Y                 |
| Bath houses, commercial beaches             | A       | A        | A  | Y | Y | Y | N | A  | Y                | Y                 |
| Commercial picnic area, outing areas        | A       | N        | N  | Y | Y | Y | N | A  | A                | A                 |
| Marina                                      | N       | N        | N  | A | A | A | N | A  | A                | A                 |
| Private Dock or Piers <sup>11</sup>         | A       | A        | A  | A | A | A | A | A  | A                | A                 |

### Use Regulation Schedule

| Activity or Use   | RR & RA | District     |    |   |                 |                 | AG | MU <sup>14</sup> | WRP <sup>16</sup> |
|---|---------|--------------|----|---|-----------------|-----------------|----|------------------|-------------------|
|   |         | RB           | RC | P | B               | I               |    |                  |                   |
| <u>RESIDENTIAL USES</u>                                       |         |              |    |   |                 |                 |    |                  |                   |
| Dwelling  |         |              |    |   |                 |                 |    |                  |                   |
| Single family   | Y       | Y            | Y  | N | N               | N               | Y  | Y                | Y                 |
| Semidetached  | N       | Y            | Y  | N | N               | N               | N  | N                | N                 |
| Two-family  | N       | Y            | Y  | N | N               | N               | N  | Y                | Y                 |
| Multifamily <sup>9</sup>                                      | N       | N            | Y  | N | N               | N               | N  | A                | N                 |
| Non-family accommodations                                     | N       | A            | A  | N | A               | A               | N  | A                | N                 |
| Motel or hotel  | N       | N            | N  | N | A               | A               | N  | A                | A                 |
| Mobil home (stored or occupied)                               |         |              |    |   |                 |                 |    |                  |                   |
| subject to § 198-28   | A       | A            | A  | N | N               | N               | N  | N                | N                 |
| Dwelling conversion (subject to the provisions of § 198-32.1) | A       | A            | A  | N | A               | A               | A  | A                | A                 |
| Accessory apartment/inlaw apartment                           | A       | A            | A  | N | N               | N               | A  | Y                | Y                 |
| Accessory apartment to a business                             | N       | N            | N  | N | A               | A               | N  | Y                | Y                 |
| Bed & breakfast home  | A       | A            | A  | N | A <sup>12</sup> | A <sup>12</sup> | A  | A                | A                 |
| <u>OTHER PRINCIPAL USES</u>                                   |         |              |    |   |                 |                 |    |                  |                   |
| Temporary structures  | Y       | Y            | Y  | Y | Y               | Y               | N  | A                | A                 |
| Airport, heliport   | N       | N            | N  | N | N               | N               | A  | N                | N                 |
| <u>ACCESSORY USES</u>   |         |              |    |   |                 |                 |    |                  |                   |
| Home occupation   |         | see § 198-23 |    |   |                 |                 |    |                  |                   |
| Parking Not More Than:  |         |              |    |   |                 |                 |    |                  |                   |
| 2 non commercial vehicles per dwelling unit <sup>6</sup>      | Y       | Y            | Y  | Y | Y               | Y               | Y  | Y                | Y                 |
| 1 commercial vehicles not over 1 1/2 tons                     | Y       | Y            | Y  | Y | Y               | Y               | Y  | Y                | Y                 |
| Parking in excess of above                                    | N       | N            | N  | N | N               | N               | N  | N                | N                 |
| Taking of boarders  | Y       | Y            | Y  | N | Y               | Y               | N  | Y                | Y                 |
| Signs <sup>7</sup>  | Y       | Y            | Y  | Y | Y               | Y               | Y  | Y                | Y                 |
| Light manufacturing for retail sales primarily on premises    | A       | A            | A  | A | Y               | Y               | N  | A                | N                 |
| Storage of camper or utility trailer <sup>8</sup>             | Y       | Y            | Y  | Y | Y               | Y               | Y  | N                | N                 |
| Other customary uses  | Y       | Y            | Y  | Y | Y               | Y               | Y  | Y                | Y                 |
| Wireless Communications Facilities                            | A       | A            | A  | N | A               | A               | A  | A                | N                 |
| Facade and Roof-Mount Antennas                                | A       | A            | A  | N | Y               | Y               | A  | Y                | N                 |
| Wind Energy Facility - On-Site                                | N       | N            | A  | A | A               | A               | A  | N                | A                 |
| Wind Energy Facility - Small Wind Energy System               | Y       | Y            | Y  | Y | Y               | Y               | Y  | Y                | Y                 |
| Wind Energy Facility - Building Integrated                    | A       | A            | A  | A | A               | A               | A  | A                | A                 |
| Solar Photovoltaic Energy Facilities (SPEF)                   |         |              |    |   |                 |                 |    |                  |                   |
| On-Site Ground-Mounted  | Y       | Y            | Y  | Y | Y               | Y               | Y  | Y                | Y                 |

NOTES:

- \* Except "A" in RA District.
- \*\* Except "A" in RR District.
- \*\*\* Any permit issued for livestock raising as defined shall be subject to approval by the Board of Health.
- X See § 198-25.
- XX The special permit granting authority for all drive-through windows shall be the Fairhaven Planning Board. **[Added by Art. 22, 11-23-1998 STM]**
- XXX Subject to the provisions of § 198-29.3, Sexually oriented businesses. **[Added by Art. 25, 11-23-1998 STM]**
- <sup>a</sup> Aquaculture facilities allowed by special permit. **[Added 5-1-1999 ATM by Art. 8]**
- <sup>b</sup> Provided that no individual retail business unit exceeds 5,000 square feet. **[Added 5-1-1999 ATM by Art. 8]**
- <sup>1</sup> See § 198-26.
- <sup>2</sup> Alcoholic beverages other than light wines and malt beverages shall not be served or sold in any form.
- <sup>3</sup> Provided it is an extension of and, except for intervening streets, contiguous to an existing cemetery.
- <sup>4</sup> Except those whose chief activity is one customarily on as a business.
- <sup>5</sup> Except that roller coasters, Ferris wheels, outdoor theaters, race tracks and similar large and noisy structures shall not be permitted.
- <sup>6</sup> Or four (4) non-commercial vehicles accessory to a single family house.
- <sup>7</sup> Subject to the provisions of § 198-26. **[Amended 5-2-1998 STM by Art. 29]**
- <sup>8</sup> Provided that it is not stored within a required front yard, and further provided that it is not occupied more than forty-eight (48) hours consecutively. Storage of a mobile home, whether occupied or not, or longer term occupancy of a camper requires a special permit from the Zoning Board of Appeals and is not considered a customary accessory use to a residential structure.
- <sup>9</sup> Subject to § 198-29.
- <sup>10</sup> See § 198-32.
- <sup>11</sup> Subject to § 198-32.2. **[Amended 5-7-05 ATM by Art. 20]**
- <sup>12</sup> Provided that the home has been legally used and occupied as a residential home for a minimum period of one year.
- <sup>13</sup> In RR, RA, and AG districts parking for 20 or more cars requires a Planning Board special permit.
- <sup>14</sup> Mixed use buildings may contain any combination of uses that are allowed [Y] or allowed by special permit [A].
- <sup>15</sup> Provided it is an extension of and contiguous to an existing cemetery; provided it is an extension of and contiguous to an existing cemetery containing no less than 20 acres as provided for in MGL c 114 § 43D. All crematoria shall require a special permit of the Planning Board only.
- <sup>16</sup> Subject to the provisions of § 198-29C the Planning Board as special permit granting authority may, by special permit, allow a use or combination of uses on a lot in the Wetland Resource Protection District provided that such use or combination of uses is either permitted or authorized by special permit in either the district in which the lot was last zoned or in the Mixed Use District. **[Added 5-1-1999 ATM by Art. 8]**
- <sup>17</sup> (Reserved)
- <sup>18</sup> (Reserved)
- <sup>19</sup> A Body Art Establishment shall not be located within 1,000 feet of an exterior property line of a school or church as determined by the Building Inspector **[Added 5-5-2001 ATM by Art 11]**
- <sup>20</sup> Prohibited in the RA District. **[Added 5-4-2013 STM by Art 8]**

## **198-17. Intensity of use regulations.**

- A. All buildings hereafter erected in any district shall be located on a lot such that all minimum requirements set forth in the following table are conformed with, except where specifically exempted by this chapter or General Law.
- B. No existing lot shall be changed in size or shape, except through a public taking or except where otherwise permitted herein, so as to result in violation of the requirements set forth below. **[Amended 1-22-1977 STM by Art. 5]**
- C. **[Amended 3-16-1974 ATM by Art. 89; 1-22-1977 STM by Art 5; 5-4-1991 ATM by Art. 24]** Exempt lots MGL. c. 40A § 6, exempts the following lots from current lot use, area and frontage requirements.
- (1) Single lot exemption for single family and two-family use. Any increase in area, frontage, width, yard or depth requirements of a zoning ordinance or bylaw shall not apply to a lot for single- and two-family residential use which, at the time of recording or endorsement, whichever occurs sooner, was not held in common ownership with any adjoining land, conformed to then existing requirements and has less than the proposed requirement but at least 5,000 square feet of area and 50 feet of frontage.
  - (2) Common lot exemption for single- and two-family use. Any increase in area, frontage, width, yard or depth requirement of a zoning ordinance or by-law shall not apply for a period of five years from its effective date to a lot for single- and two-family residential use, provided that the plan for such a lot was recorded or endorsed and such lot was held in common ownership with adjoining land and conformed to the existing zoning requirements as of January 1, 1976, and contained at least 7,500 square feet and 75 feet of frontage, and provided that said five year period does not commence prior to January 1, 1976, and provided that the provisions of this sentence shall not apply to more than three adjoining lots held in common ownership.
  - (3) Approval Not Required Plans (ANR) exemption. ANR plans referred to in MGL c.41 § 81P, when submitted to the Planning Board along with written notice to the Town Clerk and subsequently approved by the Planning Board, the use of the land shown on such plan shall be governed by the provisions of the zoning bylaw in effect at the time of submission to the Planning Board and for a period of three years from the date of endorsement by the Planning Board.
  - (4) Definitive subdivision plans exemption. If a definitive plan, or a preliminary plan followed within seven months by a definitive plan, is submitted to a Planning Board for approval under the Subdivision Control Law<sup>2</sup>, and written notice has been given to the Town Clerk before effective date of a zoning bylaw, the land shown on such plan shall be governed by the provisions of the zoning bylaw in effect at the time of the first submission to the Planning Board, and when such definitive plan is approved for eight years from the date of the Planning Boards endorsement; plans submitted and approved by the Planning Board before January 1, 1976, for seven years from the date of Planning Board endorsement.<sup>3</sup>
- D. Not more than one single-family, semidetached or two-family dwelling shall be erected on a lot. Not more than one principal building other than the above shall be erected on a lot unless each such building is served by access and utilities determined by the Building Commissioner to be functionally equivalent to those otherwise required for separate lots. Two or more principal buildings on a single lot, if listed as uses on separate rows in § 198-16, must each meet the minimum dimensional requirements of this section without counting any lot area twice. **[Added 3-15-1973 ATM by Art. 75; amended 4-16-1975 ATM by Art. 58]**

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<sup>2</sup> Editor's Note: See MGL c. 41 § 81K et seq.

<sup>3</sup> Editor's Note: Former Section 2.4.4, which immediately followed this subsection, was deleted 3-22-1969 ATM by Art. 56.

**198-18 Intensity of use schedule.** [Amended 3-22-1969 ATM by Art 56; 3-28-1970 ATM by Art 56; 3-30-1972 ATM by Art. 76; 9-14-1972 STM by Art. 20; 3-15-1973 ATM by Art 77; 3-15-1973 ATM by Art 78; 5-10-1988 ATM by Art. 11; 11-29-1988 STM by Art. 2; 5-9-1989 ATM by Art. 19; 12-10-1992 STM by Art. 1; 5-6-1995 ATM by Art. 24, 11-6-1997 STM by Art. 19, 5-2-1998 STM by Art.26, 5-1-1999 ATM by Art. 8; 5-5-2001 ATM by Art. 13; 2-11-2004 STM by Art. 14]<sup>4</sup>

| Intensity of Use Schedule         |              |                                |                            |              |             |             |              |                         |                |
|-----------------------------------|--------------|--------------------------------|----------------------------|--------------|-------------|-------------|--------------|-------------------------|----------------|
| Minimum Lot Requirements          |              |                                |                            |              |             |             |              |                         |                |
| Lot Area<br>(sq. ft.)             | RR<br>30,000 | RA & RB<br>15,000 <sup>1</sup> | RC<br>100,000 <sup>2</sup> | P<br>100,000 | B<br>15,000 | I<br>50,000 | AG<br>50,000 | MU<br>____ <sup>3</sup> | WRP<br>100,000 |
| Frontage at<br>Street (ft.)       | 140          | 100                            | 200                        | 200          | 100         | 140         | 200          | 100                     | 140            |
| Contiguous<br>upland              | 24,000       | 13,500                         | 70,000                     | 70,000       | 14,250      | 35,000      | 35,000       |                         | 50,000         |
| Percent of<br>minimum lot<br>area | 80%          | 90%                            | 70%                        | 70%          | 95%         | 70%         | 70%          |                         | 50%            |

NOTES:

1 Increase fifty percent (50%) for permitted semidetached and two family dwellings.

2 Multifamily dwellings require five thousand (5,000) sq. ft. per dwelling unit plus five hundred (500) sq. ft. per bedroom.

<sup>3</sup> In the Mixed Use District the minimum lot sizes shall be 15,000 square feet or that present as of January 1, 1998 whichever is less.

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<sup>4</sup> Editors Note: This article also provided that it shall apply to all new special permits subject to § 198-29 applied for after January 4, 2001, as provided for in MGL c. 40A, § 6. It shall also apply to such special permits granted prior to January 4, 2001, as provided for in MGL c. 40A, § 6, if the building permits authorized under such special permit are not issued prior to November 5, 2001.

### Minimum Yard Requirements

|  | RR  | RA & RB | RC              | P               | B              | I               | AG  | MU                 | WRP              |
|--|-----|---------|-----------------|-----------------|----------------|-----------------|-----|--------------------|------------------|
| Building setbacks                          |     |         |                 |                 |                |                 |     |                    |                  |
| Front (ft.) <sup>1, 6</sup>                | 30  | 20      | 50 <sup>4</sup> | 50              | — <sup>2</sup> | 50              | 50  | 20 <sup>1, 2</sup> | 20               |
| Side (ft.)                                 | 20  | 10      | 25 <sup>4</sup> | 25 <sup>5</sup> | — <sup>3</sup> | 25 <sup>5</sup> | 30  | 10                 | 10               |
| Rear (ft.) <sup>7</sup>                    | 30  | 30      | 50 <sup>4</sup> | 50              | — <sup>3</sup> | 50              | 50  | 30                 | 30               |
| Maximum Building height (ft.)              | 35  | 35      | 40              | 40              | 40             | 40              | 35  | 40                 | 35               |
| Maximum Lot coverage (%) <sup>10</sup>     | 25% | 50%     | 50%             | 50%             | 70%            | 65%             | 25% | 70%                | 50% <sup>8</sup> |
| Maximum Building coverage (%) <sup>9</sup> | 15% | 30%     | 25%             | 25%             | 25%            | 25%             | 10% | 25%                | 25%              |

#### NOTES:

- <sup>1</sup>. No new building need provide yards greater than the average of those existing or abutting lots on the same street. Front deck and/or porch setbacks may conform to the average setbacks of those existing on the same street. Corner or through lots shall observe front yard requirements from both streets.
- <sup>2</sup>. Front yard requirements established by Town Meeting votes recorded on plats on file in Town Clerk's office. Minimum of 20 feet required if none specified.
- <sup>3</sup>. When abutting a residence district, 10 feet. None required elsewhere, provided that access to rear of structure and space for any required off-street loading or parking can be gained by other means.
- <sup>4</sup>. For multifamily dwellings, increase to not less than building height for any yard in which building width parallel to lot line exceeds 30 feet.
- <sup>5</sup>. When abutting a residential use or district, increase to 50 feet; which shall contain no parking, but at least 10 feet of which shall contain densely planted trees (at least two inches in diameter) and shrubs (at least three feet high) unless existing vegetation is retained and provides equal screening for the purpose.
- <sup>6</sup>. A noncovered porch, deck or landing not exceeding 72 square feet, nor extending more than six feet into a required front yard, and attached to a principal building, shall be exempt from this requirement. This exemption applies only to zoning districts RR, RA, and AG.
- <sup>7</sup>. A noncovered porch, deck or landing not exceeding 450 square feet, nor extending more than 15 feet into a required rear yard, and attached to a principal building, shall be exempt from this requirement. This exemption only applies to zoning districts RR, RA, and AG.
- <sup>8</sup>. Building coverage shall be a maximum of 25%, total coverage of lot shall be 50% including building and all accessory uses such as parking etc. At least 50% of the lot shall remain in its natural state. **[Added 5-1-1999 ATM by Art. 8]**
- <sup>9</sup>. Maximum Building Coverage - See definitions Section 198-33. **[Added 5-5-2001 ATM by Art. 13; Amended 2-11-2004 STM by Art. 14]**
- <sup>10</sup>. Maximum Lot Coverage - See definitions Section 198-33. **[Added 5-5-2001 ATM by Art. 13; Amended 6-8-2002 ATM by Art. 5; Amended 2-11-2004 STM by Art. 14]**

### § 198-19 Fences. **[Added 3-22-1969 ATM by Art. 56]**

- A. Corner lots shall provide visibility unobstructed at intersections. No sign, fence, wall, hedge or other obstruction shall be allowed to obstruct vision between three and one-half (3 ½) feet and eight (8) feet above the street grade within an area formed by intersecting street lines and a straight line joining points on said street lines two (2) feet back from their point of intersection.
- B. No boundary fence, wall or hedge shall exceed six (6) feet in height, and no boundary fence, wall, hedge, or other landscape feature, which obstructs vision shall exceed forty-two (42) inches in height within any required front yard area or within twenty (20) feet of the street, whichever is the lesser requirement. **[Amended 5-1-2010 ATM by Art. 31]**

C. All fences shall be installed so that the finished side faces the abutting properties.

**§ 198-20 Soil Removal. [Added 5-6-1989 STM by Art. 5]**

No loam shall be removed from any lot area or other area of a subdivision that is not outlined on the plan as a roadway, until specific building permits are issued for the specific lots involved.

## **ARTICLE III GENERAL REGULATIONS**

**§ 198-21. Nonconforming uses.**

The lawful use of any structure or land existing at the time of the enactment of this chapter may be continued although such structure or use does not conform with provisions of this chapter subject to the following conditions and exceptions.

- A. Abandonment. A nonconforming use which has been abandoned or discontinued for a period of two (2) years shall not be reestablished and any further use shall conform with this chapter, except in cases of land used for agriculture, horticulture or floriculture where such nonuse shall have existed for a period of five (5) years.
- B. Alterations. A nonconforming structure may not in any one (1) year be altered except as ordered by the Building Commissioner to make it safe, or repaired in any ten-year period to the extent that the cost of such alterations exceeds fifty percent (50%) of the market value of the structure determined by the Building Commissioner at the time of the change.
- C. Extension. No increase in the area or extent of the nonconforming use of a structure or land may be made.
- D. Restoration. No nonconforming structure damaged by fire, storm or other causes to the extent of seventy-five percent (75%) of its replacement value as determined by the Building Commissioner shall be repaired or rebuilt except in conformity with this chapter, and further provided that such restoring shall be complete within two (2) years after such catastrophe.
- E. Changes. Once changed to a conforming use, no structure or land shall be permitted to revert to a nonconforming use. On special permit from the Zoning Board of Appeals, the use of the premises may be changed from one nonconforming use to another which is no more objectionable to the neighborhood.
- F. The construction of a building or operation of land use under a building permit or special permit shall conform to any subsequent amendment to the chapter adopted after the issuance of the permit unless such construction or operation commences within a six month period beginning with issuance of the building permit or special permit.

**§ 198-22 Accessory buildings and uses.**

Buildings and uses, which are customarily incidental and subordinate to the uses allowed as permitted uses in any zone are allowed as accessory buildings and uses, except as expressly restricted or prohibited in this by-law.

Accessory buildings and uses are subject to the provisions of this section. **[Amended 3-23-1968 ATM by Art. 58; 12-10-1992 STM by Art. 1; amended 2-11-2004 STM by Art. 16]**

- A. Accessory buildings and uses must comply with the following provisions:
  - (1) No accessory building or use shall have more than 700 square feet of floor area;
  - (2) No accessory building or use shall exceed 20 feet in height, or be higher than the principle building, whichever is lower;



- (3) No accessory building or use shall be allowed in a required front yard or in the area between two lines drawn from the principle structure at its widest point to the lot frontage, and perpendicular to the frontage line of the lot, except that permitted signs or roadside stands may be located within a required front yard area;
  - (4) No accessory building or use shall be closer than five (5) feet to any lot line and shall not be built over an easement;
  - (5) Accessory buildings shall be built in accordance with building codes;
  - (6) These provisions regarding accessory buildings shall not apply to barns or other agricultural structures that are used for agricultural purposes exempt under MGL c. 40A, §3;
- B. **[Added 5-7-1988 STM by Art. 7]** Structures for the keeping of animals. A structure, including an open pen or other enclosure designed, intended or used for the shelter or enclosure of one (1) or more animals, except where such structure is an allowed principal building, shall not be allowed except as follows:
- (1) It shall be located only in a rear yard and shall be no closer to any boundary line constituting frontage than the most distant point of the principal building from that boundary line.
  - (2) It shall be located no closer than five (5) feet from any property line and twenty (20) feet from any dwelling or occupied structure.
  - (3) It shall be constructed only upon application for a permit showing receipt of any necessary permission for the keeping of such animals from all applicable regulatory agencies.
- C. Activities necessary in connection with scientific, research, scientific development or related production shall be permitted as an accessory use by special permit in any district, provided that the special permit granting authority finds it does not substantially derogate from the public good **[Added 2-9-1978 ATM by Art. 2; Amended 2-11-2004 STM by Art. 16]**
- D. Swimming Pools. **[Added 4-3-1971 ATM by Art. 80; Amended 2-11-2004 STM by Art. 16]**
- (1) Swimming pools are a permitted accessory use. If having a depth of four (4) feet or more and a capacity of four hundred (400) cubic feet or more, they are considered structures and must comply with regulations of the Board of Health regarding minimum standards for residential swimming pools.<sup>5</sup>
  - (2) Every outdoor swimming pool considered to be a structure whether or not filled with water shall be completely surrounded at all times by a fence or wall not less than four (4) feet in height above grade, which wall may be pool wall itself.
  - (3) Every such fence or wall shall be so constructed as to not have openings, holes or gaps larger than four (4) inches in any diameter, except for doors, gates and picket fences; in the latter case, however, the gaps between pickets shall not exceed four (4) inches. All primary enclosures shall be constructed of either a four-inch chain link fence or a solid stockade fence. **[Amended 5-9-1989 ATM by Art. 19]**
  - (4) All gates or doors opening through such enclosures shall be of not less than four (4) feet in height and shall be equipped with a self closing and self latching device located at least four (4) feet above the underlying ground and inaccessible from the outside to small children. Every such gate or door shall be kept latched at all times when the swimming pool is not in use and any ladders removed.
  - (5) All swimming pools erected after adoption of these provisions must comply with them at the time of erection, and all existing swimming pools must comply not later than July 1, 1972, § 198-21 notwithstanding.

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<sup>5</sup> Editors Note: See Ch. 475, Swimming Pools.

**§ 198-23. Home Occupations. [Amended 3-25-1967 ATM by Art. 55; 3-28-1970 ATM by Art. 57]**

- A. Home occupations are permitted only if conforming to the following conditions:
- (1) The home occupation shall be accommodated within an existing structure without extension thereof.
  - (2) No more than twenty-five percent (25%) of the floor area of the residence shall be used for the purpose of the home occupation.
  - (3) Not more than one (1) person not a member of the household shall be employed on the premises in the home occupation.
  - (4) There shall be no exterior display, no exterior storage of materials, no outside parking of commercial vehicles and no other exterior indication of the home occupation or other variation from the residential character of the principal building other than an unlighted sign not to exceed one (1) square foot area.
  - (5) No offensive noise, vibration, smoke, dust, odors, heat or glare shall be produced. (See § 198-24).
  - (6) Traffic generated shall not exceed volumes normally expected in a residential neighborhood.
  - (7) The parking generated shall be accommodated off street, but not more than two (2) parking spaces shall be located within a required front yard.
- B. **[Amended 12-10-1992 STM by Art. 1]** The following occupations are permitted as home occupations only on a special permit from the Zoning Board of Appeals:
- (1) Barbershop.
  - (2) Beauty parlor.
  - (3) Dancing instruction.
  - (4) Building trades.
  - (5) Appliance and electronic repairs.
  - (6) Bed and Breakfast Home. An allowed use with a special permit, where required (see § 198-16) and shall be owner occupied. These types of establishments shall be limited to three (3) guest rooms per dwelling and shall also be subject to § 198-27B in regard to parking. **[Added 5-4-1991 ATM by Art. 26]**
- C. Occupations permitted as home occupations without necessity of a special permit include fine art studios, dressmaking, millinery, teaching of not more than four (4) pupils simultaneously (or in the case of musical instructor, of not more than a single pupil at a time), professional offices of a physician, dentist, lawyer, engineer, architect or accountant, public stenography, arts and crafts, telephone sales, office for telephone and correspondence of business otherwise conducted elsewhere, real estate office, photo studio or similar occupations. **[Amended 12-10-1992 STM by Art. 1]**
- D. The following occupations are not allowed as home occupations: tourist home, commercial stables or kennels, sale of articles not produced on the premises. Any occupation not covered under Subsections B and C is not to be considered a home occupation. **[Amended 12-10-1992 STM by Art. 1]**

**§ 198-24 Noise, Litter and Smoke Standards**

No activity shall be permitted in any district unless it can be demonstrated its operation will be conducted that the following standards will be met:

- A. No noise, sound from public address or other amplification systems, vibration, odor or flashing shall be normally perceptible more than four hundred (400) feet from the premises if in an industrial district, more than one hundred (100) feet from the premises if in a business district and more than twenty (20) feet from the premises if in another district.
- B. Interferences originating in an industrial district shall not normally be perceptible more than one hundred fifty (150) feet within a business district, nor more than one hundred (100) feet within a residential district.

**§ 198-25 Location of Automobile Services [Amended 5-13-1978 ATM by Art. 55]**

- A. No portion of the front or side lines of a public garage, automobile repair shop, greasing station, storage battery, service station or gasoline filling station, or any of their appurtenances or accessory uses, shall hereafter be placed within fifty (50) feet of any residence district. No driveway to such premises shall be in any part within fifty (50) feet of any residential district. No such premises shall have any driveway entrance or exit for motor vehicles within three hundred (300) feet of the property used by any public or private school, public library, church, playground or institution for the sick or dependent or for children under sixteen (16) years of age.
- B. Every filling station shall hereafter be located not less than fifteen (15) feet inside the building line, and no filling shall be done except into cars standing on the property of the filling station.
- C. A yard, building or other facility for the storage, display dismantling, junking or similar disposal or use of overage or wrecked motor vehicles shall be classed as an industrial use. Automobile services permitted as a commercial use shall include gasoline filling stations supplying fuel, oil and automobile accessories to motor vehicles, lubrication and minor repair services.
- D. Repairs requiring removal of motors transmissions differentials or similar major elements are permitted if within the building interior. Body work and painting are not allowed uses, nor external storage of more than six vehicles requiring repair. The exterior storage of any parts including tires, and used automotive parts is not a permitted use.

**§ 198-26 Sign Regulations [Added 3-25-1967 ATM by Art. 56; Amended 3-16-1974 by Art. 91, Replaced 5-2-1998 STM Art. 29]**

- A. Authority. This section is adopted pursuant to the authority conferred upon the town by MGL c. 40A, MGL c. 93, § 29, and MGL c. 143, § 3. Nothing in this chapter shall be construed to abrogate the town's control under MGL c. 87, § 9, governing signs placed on shade trees enforceable by the Tree Warden or the town's control under MGL c. 85, § 8, governing signs placed within a public way enforceable by the Selectmen or under the Building Code.
- B. Purpose. The sign regulations section is designed to provide standards for the installation of signs so as to reduce traffic safety hazards, protect property values, promote economic development and encourage the creation of an aesthetic appearance along the street frontages in the Town of Fairhaven. The sign regulations, as set forth in this section, are designed to be both logical and equitable for the various uses and identification needs. These sign standards and regulations help to effectuate an aesthetic and safe street environment. Restrictions on type, location and size of signs protect the public from hazardous and distracting devices.
- C. General Regulations
  - (1) Regulations. No sign permit or license shall be required for the signs listed in subsection C(2) of this section, provided that:
    - (a) The sign is permitted in the zoning district in which the sign is placed;
    - (b) The requirements for each sign listed in Subsection C(2) of this section are satisfied; and
    - (c) The sign does not violate the provisions of Subsection C(3) of this section.
  - (2) Signs exempt from permit and license requirements.
    - (a) Balloons less than 24 inches in diameter.
    - (b) Building markers and historic or commemorative plaques are exempt from obtaining a permit and license.
    - (c) Construction signs. One temporary freestanding construction sign or wall sign per project construction site is exempt from obtaining a permit and license on each street frontage of the project, subject to the following conditions:

- [1] The construction sign shall not exceed 32 square feet.
- [2] The construction sign shall be a maximum of six feet in height for residential districts or 15 feet in height for other districts.
- (d) Flags, noncommercial.
- (e) Garage sale signs.
- (f) Home improvement/home construction/home remodeling signs are exempt from obtaining a permit and license, provided that:
  - [1] There shall be only one such sign not exceeding 32 square feet in total surface area and four feet in height for each lot.
- (g) Interior signs.
- (h) Murals.
- (i) Official signs and notices.
- (j) Political campaign signs.
  - [1] Such signs shall be removed within 10 days following an election.
- (k) Political signs.
- (k) Public utility signs.
- (m) Real estate signs are exempt from obtaining a permit and license, provided that:
  - [1] Real Estate Signs for single- or two-family residential dwellings or lots.
    - [a] There shall be one sign per street frontage up to a maximum of two signs per lot.
    - [b] Such sign shall be located on the lot for sale or lease.
    - [c] Such sign shall not exceed six square feet
  - (2) Real estate signs for all other uses.
    - [a] General Provision. The real estate sign shall be located on the site for sale or for lease.
    - [b] The site may elect one of the following options, subject to provisions of the clear view triangle area as defined in § 198.26G(1).
      - (i) Incorporate the real estate sign into the permanent identification sign; or
      - (ii) One real estate sign, not exceeding six square feet, shall be permitted per street frontage up to a maximum of two signs per site. The maximum height shall be six feet.
    - [c] Real estate signs shall be included as part of the square footage calculations for permanent signs.
- (n) Residential name plates are exempt from obtaining a permit.
- (o) Window Signs. Signs within a retail display window or attached thereto, provided they do not exceed a maximum of 25% percent of any retail display window.
- 3. Signs Prohibited in all districts.
  - (a) Signs which interfere with official signs and traffic control devices prohibited.
    - [1] No person shall be permitted to place a sign which prevents the driver of a vehicle from having a clear and unobstructed view, from an adequate and safe distance, of any official sign or approaching or merging traffic.

- [2] No sign or sign structure shall be permitted which attempts or appears to attempt to direct the movement of traffic or which interferes with or obstructs the view of, or can be confused with, imitates, or resembles any official traffic sign, signal, or device.
- [3] No rotating beam, moving letter signs in which the letters change more often than once per hour, except for time or temperature, beacon or flashing illumination resembling any emergency light shall be used in connection with any sign display, unless the sign is a traffic control sign, a public utility sign or a public notice.
- (b) Interference with intersections prohibited. No sign or sign structure shall be located in such a manner as to materially impede the view of any street or highway intersection. (See § 198.26G(1), Clear view triangle.)
- (c) Signs on natural features and utility poles prohibited. No sign shall be permitted to be painted on, attached to or maintained upon utility poles, trees, shrubs, rocks or other natural features, except that historical or commemorative plaques may be mounted in rocks, and that “No Trespassing”, “No Hunting” “Property Boundary” or “Ownership” signs may be mounted on trees, rocks, shrubs or other natural features.
- (d) Portable billboard not allowed except for grand openings and not to exceed seven calendar days.
- (e) Flashing Signs Prohibited. Flashing signs shall be prohibited.
- (f) Shimmering Signs Prohibited. Shimmering signs shall be prohibited.
- (g) Any sign emitting sound shall be prohibited.
- (h) Any off-site identification sign or advertising sign unless otherwise herein provided shall be prohibited.
- (i) Signs that exceed the requirements listed in the below.
- (j) Signs to which MGL c. 93 § 30, applies, displaying commercial messages, are prohibited
- (k) Signs not listed as permitted are prohibited. Any sign not identified as a permitted sign in § 198.26D of this Code is prohibited.
- (4) Free-standing signs, building identification signs, sign structures, poles and other related equipment that have been abandoned for more than two years shall be removed.
- (5) Illumination of signs.
  - (a) Interference with traffic. No lighting shall be permitted to be used in any way in connection with a sign unless it is effectively shielded so as to illuminate the sign surface only and to prevent beams or rays of light from being directed at any portion of the main-traveled way of the public roadway or onto any residential property, or is of such low intensity or brilliance as not to cause glare or to impair the vision of the driver of any motor vehicle, or to otherwise interfere with any drivers operation of a motor vehicle.
  - (b) Underground electrical service. All illuminated freestanding identification signs shall have underground electrical service unless evidence is provided that the local electric utility will not permit such underground service.
  - (c) Any sign which is externally illuminated shall be a minimum distances of 100 feet between the leading edge of the illuminated sign and an adjoining residential property line.
  - (d) In locations where the stated set back requirements from residential uses or districts cannot be met, then illumination of signs must be turned off between the hours of 11 p.m. and 6 a.m.
- D. Design regulations for signs requiring a sign permit.
  - (1) Residential, Agricultural and Park Zoning Districts (RA, RB, RC, A, P).

- (a) Regulations for freestanding identification signs. All freestanding identification signs shall be located on the site of the use and are subject to any additional provisions of § 198.26G, Sign location and basic design elements for specific building identification signs.
  - [1] Where permitted.
    - [a] Residential uses. Freestanding signs shall be permitted only for neighborhood identification signs.
    - [b] Nonresidential uses. Freestanding signs shall be permitted.
  - [2] Maximum sign height.
    - [a] No part of the sign face or the sign support structure of a freestanding sign shall be more than eight feet above the average grade of the site.
  - [3] Maximum sign area and number of signs.
    - [a] Residential uses (neighborhood identification): Two freestanding signs shall be permitted with a maximum allowable size of 40 square feet each per neighborhood.
    - [b] Nonresidential uses.
      - [i] One freestanding sign shall be permitted with a maximum allowable size of 40 square feet; or
      - [ii] If the non-residential use has two public street frontages, one freestanding sign shall be permitted per street frontage with a maximum size of 24 square feet per sign.
  - [4] Illumination. Only external illumination shall be permitted. See § 198.26C(5) for additional provisions on illumination.
- (b) Regulations for building identification signs. All building identification signs shall be located on the site of the use and are subject to any additional provisions of § 198.26G, Sign location and basic design elements for specific building identification signs.
  - [1] Wall signs.
    - [a] Where permitted.
      - (i) Residential uses. Wall signs shall be permitted for residential nameplates only.
      - (ii) Nonresidential uses.
        - [A] Wall signs shall be permitted.
        - [B] Projecting/hanging or suspended signs. One projecting/hanging or suspended signs shall be permitted not to exceed 10 square feet per sign. A minimum clearance of 10 feet above the sidewalk shall be required for pedestrians.
        - [C] Awning signs. Awning signs shall be permitted provided that no awning shall extend above the roof line and no awning sign shall be allowed above the first floor of the building.
        - [D] Canopy signs. Canopy signs shall be permitted provided that the sign shall be located on the facades of the canopy fronting on a public street.
  - [b] Maximum size and number of signs.
    - [i] In addition to the permitted freestanding sign for a public street frontage, a non-residential use in a residential district may elect to have a wall sign oriented towards that public street frontage. The maximum allowable sign surface area for the wall sign shall not exceed 10% of the area of the elevation.
    - [c] Distance from side or rear lot line. A wall sign is allowed only on a wall facing a public street. A wall entrance sign is not required to face a public street.

- [d] Illumination. Only external illumination shall be permitted. Halo effect lighting shall be permitted. See § 198.26C(5) for additional provisions on illumination.
- [2] Marquee signs. Marquee signs shall not be permitted.
- [3] Suspended signs. Suspended signs shall not be permitted.
- [4] Message centers. Message centers shall not be permitted.
- (c) Other signs. All other signs shall be located on the site of the use.
- (d) Prohibited signs. See § 198.26C(3).
- (e) Temporary signs. See § 198.26E
- (2) Business and Industrial Zoning Districts.
  - (a) Regulations for freestanding identification signs. All freestanding identification signs shall be located on the site of the use and are subject to any additional provisions of § 198.26G Sign location and basic design elements for specific building identification signs.
    - [1] For buildings, shopping centers, or planned developments with a gross floor area of greater than 15,000 square feet.
      - [a] Freestanding signs shall be permitted. Message centers shall be permitted as part of freestanding signs, provided that no moving letter signs in which the letters change more often than once per hour, except for time or temperature are allowed.
      - [b] Maximum sign height. No part of the sign face or the sign support structure shall be more than 22 feet above the average grade of the site.
      - [c] Maximum sign area and number of signs.
        - (i) One freestanding identification sign shall be allowed per site per public street frontage.
        - (ii) The maximum sign surface area for a freestanding sign shall be 100 square feet.
      - [d] Illumination. Illumination shall be permitted. See § 198.26C(5) for additional provisions on illumination.
    - [2] For buildings, shopping centers, or planned developments with a gross floor area of 15,000 square feet or less.
      - [a] Freestanding signs shall be permitted. Message centers shall be allowed as part of freestanding signs, provided that no moving letter signs in which the letters change more often than once per hour, except for time or temperature are allowed.
      - [b] Maximum sign height. No part of the sign face or the sign support structure shall be more than 16 feet above the average grade of the site.
      - [c] Maximum sign area and number of signs. One freestanding identification sign shall be allowed per site per public street frontage. The maximum sign surface area shall be 60 square feet.
      - [d] Illumination. Illumination shall be permitted. See § 198.26C(5) for additional provisions on illumination.
  - (b) Regulations for building identification signs. All building identification signs shall be located on the site of the use.
    - [1] The following regulations apply to single tenant buildings or to tenant spaces in multiple tenant buildings.
      - [a] Any combination or number of building identification signs may be utilized, so long as the total surface area of signs on a particular building facade does not exceed the percentages

noted below, and subject to any additional provisions of § 198.26G, Sign location and basic design elements for specific building identification signs.

[b] Building identification signs are allowed only on facades serving as the primary public entrance to a building.

[c] Building Identification signs shall include:

[i] Wall signs: Shall be permitted.

[ii] Projecting or suspended signs. One wall, projecting or suspended sign, not to exceed 10 square feet per sign, shall be permitted for each separated business unit in the development. A minimum clearance of 10 feet above the sidewalk shall be required for pedestrians. Exception: For buildings, shopping centers or planned developments with a gross floor area of less than 15,000 feet, in lieu of a free-standing sign, one projecting sign not to exceed 60 square feet shall be allowed.

[iii] Awning signs, provided that no awning shall extend above the roof line and that no awning sign shall be allowed above the first floor of the building.

[iv] Canopy signs, provided that the sign shall be located on the facades of the canopy fronting on a public street.

[v] Marquee signs. One theater marquee shall be allowed on the premises or entrance to the premises of a theater or group of theaters sharing a premises. Changeable letter or symbols shall not exceed six inches in height. A minimum clearance of 10 feet above the sidewalk level shall be required for pedestrians.

[vi] Roof signs and roof integral signs shall be permitted, provided that the sign shall be located facing a public street and that no portion of the sign shall extend above the highest portion of the roof line.

[vii] Message centers shall be permitted as a part of building identification signs, provided that no moving letter signs in which the letters change more often than once per hour, except for time or temperature are allowed.

[d] Maximum size and number of signs.

[i] The maximum sign surface area for building identification signs shall not exceed 10% of the area of the elevation.

[ii] In addition to above, the linear measurement of the sign shall not exceed 80% of the linear frontage of the applicable facade of the structure or tenant space.

[iii] Illumination, illumination shall be permitted. See § 198.26C(5) for additional provisions on illumination.

(c) Additional regulations for gasoline service stations. In addition to the regulations in Subsection D(2)(b) above

[1] Service area canopy sign: maximum size and number of signs. Service area canopy signs are considered wall signs. Sign size shall be computed as above.

[2] Spandrel sign: maximum size and number of signs. The maximum sign surface area shall not exceed two square feet per dispensing station regardless of the number of hoses. The signage allowed per dispensing station may be combined into one sign on the spandrel. Signage is permitted on only two sides of the spandrel.

[3] Pump island signs. In lieu of the spandrel sign, the gasoline service station may elect pump island signs or pump toppers. Pump island signs of two square feet or less are allowed without permits. Pump island signs greater than two square feet are not allowed. Signage is permitted on only two sides of the pump island sign.



- [4] No pennants or other similar attracting or advertising devices shall be permitted except as noted in § 198.26E, Temporary signs.
  - [5] Signs on perimeter poles. Signs placed on perimeter poles or other structures or that are not expressly permitted in this section shall be strictly prohibited.
  - [6] Operator identification. Operator identification signs shall be located on the building only with a maximum dimension of six square feet.
  - (d) Other signs. All other signs shall be located on the site of the use unless specified otherwise.
  - (e) Prohibited Signs. See § 198.26C(3).
  - (f) Temporary Signs. See § 198.26E.
- E Design regulations for temporary signs requiring a sign permit.
- 1. On-site temporary signs.
    - (a) Temporary signs shall include, but not be limited to, banners, commercial flags, balloons, stringers, movable sandwich boards and similar devices.
    - (b) Maximum size and number. One banner shall be allowed per street frontage and shall be oriented towards that street frontage. The maximum size per banner shall be 100 square feet.
    - (c) Maximum height and minimum setbacks. Any temporary signs shall maintain a minimum setback of 20 feet from any street line. No temporary sign shall be placed above the highest outside wall.
    - (d) Design. Stringers and balloons may be used with the banner for business promotions. No balloon may be elevated higher than the sign height restrictions applicable to the district within which it is to be used.
    - (e) Time period for signage. Temporary signs may be used for a maximum of 15 days per permit; only one permit shall be issued per business per year.
    - (f) Window signs meeting the requirements of § 198-26C(2)(n) shall not be considered temporary signs.
  - 2. Off-site temporary signs. Off-site temporary signs shall not be permitted.
- F. Computations.<sup>5</sup>
- (1) Computation of sign surface area of individual cabinet or panel signs. To compute the area for a sign face: compute by means of the smallest, rectangle, that will encompass the extreme limits of the copy, representation, emblem or other display, together with any material or color forming an integral part of the background of the display or used to differentiate the sign from the backdrop or structure against which it is placed, including supporting framework, but not including any poles, bracing or decorative fence or wall when such fence or wall otherwise meets zoning ordinance regulations and is clearly incidental to the display itself.
  - (2) Computation of sign surface area of individual signs of individually mounted letters or symbols. When a sign is composed of individually mounted letters or symbols, the sign surface area shall be determined by means of the total of the smallest rectangle that will encompass all letters, representation, emblems or other display, including the wall area behind said letters, representations, emblems or other displays
  - (3) Computation of sign surface area of multifaceted signs. The sign surface area for a sign with more than one face shall be computed by adding together the sign surface area of all sign faces visible from any one point. When two identical sign faces are placed back-to-back, or at no greater than fifteen 15° from one another, so that both faces cannot be viewed from any point at the same time, and when such sign faces are part of the same sign structure and are not more than 42 inches apart, the sign surface area shall be computed by the measurement of one of the faces.

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<sup>5</sup> Editor's Note: This subsection also includes drawings, which help illustrate its provisions. Said drawings are found in Appendix B at the end of this chapter.

G Sign location and basic design elements for specific building identification signs.<sup>6</sup>

- (1) Clear view triangle area.
  - (a) No sign or sign structures shall be located within a clear view triangle area.
  - (b) On a corner lot, the clear view triangle area is formed by the street right-of-way lines and the line connecting points 20 feet from the intersection of such street right-of-way lines extended.
  - (c) On a lot which has a driveway or is next to a lot which has a driveway, the two clear view triangle areas are formed by the street right-of-way line, both sides of the surface edge of the driveway, and the line connecting points 20 feet from the intersection of the street right-of-way line and driveway.
- (2) Orientation of signs on corner lots or through lots. When more than one sign is permitted due to multiple frontages, each permitted sign must be oriented toward its respective frontage and set at least 100 feet distant from signs located on additional frontages, unless specified otherwise. It is the intent to prohibit lots with multiple frontages from combining sign rights so as to erect larger signs or additional signs that are oriented to only one frontage.
- (3) Free standing signs setbacks.
  - (a) Front yard setbacks. The minimum setback for all freestanding signs shall be 14 feet from the public street line except that no sign shall be located in the public street right-of-way.
  - (b) Side and rear yard setbacks: No freestanding identification sign shall be located closer than five feet to a side or rear property line.
- (4) Wall sign; location on building.
  - (a) A wall sign shall not extend outward more than 16 inches from the building or structure wall.
  - (b) A wall sign shall not extend above the roof or parapet line.

H. Maintenance of signs.

- (1) Maintenance required. All signs and sign structures shall be kept in good repair and in a proper state of maintenance.
- (2) Activities considered to be maintenance. Maintenance shall include activities such as cleaning, replacing lamps, replacing ballast in freestanding signs, replacing transformers in building identification signs, painting the pole of freestanding signs and the cabinet of freestanding or building identification signs, replacing or repairing H-bars and retainers behind the face, replacing trim, and replacement of sign fasteners, anchor bolts and repairs to electric utilities. A maintained sign structure shall have a sign face.
- (3) Items not considered maintenance. The following items are not considered maintenance and shall require that the sign be brought into conformance with all requirements with this section.
  - (a) Said maintenance shall not include any changes made to the size, height, light intensity or bulk of the sign or the temporary or permanent removal of the sign for the repair or replacement of the cabinet or any part thereof.
  - (b) Said maintenance shall not include changes in, poles, structural supports, bases or shrouds, footings or anchor bolts that are not in-kind; moving the sign for any reason; and change of the interior and/or exterior cabinet frame (excluding trim) and removal of any part of the signs for maintenance. For building signs, maintenance shall not include change in the size of channel letters or any change of returns or housing except for the sign face and trim. For single face cabinet signs, maintenance shall not include changes or replacement of the interior and/or exterior cabinets nor the cabinet support structures.

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<sup>6</sup> Editor's Note: This subsection also includes drawings, which help illustrate its provisions. Said drawings are found in Appendix B at the end of this chapter.

- (4) Temporary removal for new face. Temporary removal of the sign cabinet for the installation of a new sign face is not permitted and will require that the sign be brought into conformance with all requirements of this section.
- (5) Maintenance and repair of nonconforming signs. The legal nonconforming sign is subject to all requirements of this code regarding safety, maintenance, and repair. However, if the sign suffers more than \$3,000 appraised damage or deterioration; it must be brought into compliance with this code or be removed. If a premises changes ownership, the nonconforming signs located on the premises must be brought into compliance with this chapter. The replacement of a non-conforming wall sign due to the change in tenancy shall require that the new tenant sign conform to the requirements of this chapter as they relate to the size of the facade leased. The in-kind replacement of panels in non-conforming directory signs due to changes in tenancy shall be allowed unless such change affects more than \$3,000 appraised value of the sign, at which point the sign must be brought into compliance with this code or be removed.

I. Sign permits; fees.

- (1) It shall be unlawful for any person to erect, install, and/or replace any sign which requires a sign permit within the Town without first applying for and obtaining a sign permit from the issuing authority.
- (2) A sign permit does not include electrical work; however, this exemption shall not be deemed to grant authorization for any work to be done in violation of the provisions of any other laws or ordinances.

J. Sign permits; requirements.

- (1) A person is prohibited from obtaining a sign permit, except for a temporary sign, while a nonconforming sign remains on the property unless the permit also includes bringing the nonconforming sign into compliance, except as allowed for in § 198.26H(5).
- (2) A person may obtain a sign permit subject to the above if such person:
  - (a) Completes an application form provided by the issuing authority.
  - (b) Files a plan to scale with accurate measurements of distances showing the intended location conforming with this chapter and showing all proposed and existing signs and from that location the:
    - [1] Distance to the front, side and rear lot lines;
    - [2] Distance to the nearest edge of pavement of all adjacent roads;
    - [3] Distance to the nearest edge of pavement of all adjacent intersections of two or more streets and/or the intersection of all site driveways and public streets;
    - [4] Distance to the nearest edge of adjacent permanent signs;
    - [5] Distance to the nearest edge of adjacent portable signs;
    - [6] Distance to the nearest edge of all traffic light standards and directional signs; and
    - [7] Distance to the nearest edge of all sidewalks.
  - (c) Files complete drawings and specifications drawn to scale covering the size of the sign.

- K Variances. Variances shall not be granted for any sign, as ample provisions have been made for premise identification within this chapter, and because true hardship as defined by state law cannot be demonstrated in signage situations.

**§ 198-27     Parking, loading, and landscaping requirements [Added 3-22-1969 ATM by Art. 56; Amended 4-3-1971 ATM by Art. 82; 4-16-1975 ATM by Art. 59]**

A. Parking requirements.

- (1) It is the intent of this section that adequate off street parking must be provided within reasonable distance to service all parking demand created by new construction, whether through new structures or through additions to existing ones or by change of use creating higher parking demand.

- (2) Building, structures and land use in existence on the effective date of these provisions are not subject to these off-street parking requirements and may be rebuilt, altered or repaired, but not enlarged or changed in use, without becoming subject to these requirements.
- (3) In applying for building or occupancy permits, the applicant(s) must demonstrate via a site plan drawn to scale that minimum parking requirements set forth in Subsection B will be met. In the Apartment/Multi-Family (RC), Park (P), Wetland Resource Protection District (WRP), Business (B), Mixed Use (MU), or Industrial (I) Districts, a special permit from the Planning Board pursuant to Section 198-29 will be necessary for the following: **[Amended 12-10-1992 STM by Art. 1; Amended 6-8-2002 ATM by Art. 6; Amended 2-11-2004 STM by Art. 15]**
  - (a) New construction that would require a total of five (5) or more parking spaces counting existing and new demand;
  - (b) Addition(s) or enlargement(s) that would require a total of five (5) or more parking spaces counting existing and new demand;
  - (c) A change of use(s) or renovation(s) that would require the addition of new parking space(s). If the existing parking spaces can meet the new demand based on the change of use(s) or renovation(s) then no special permit is required;
  - (d) Re-striping of a parking lot of five (5) or more spaces that changes the existing site circulation, and/or number of parking spaces.
- (4) **[Amended 5-2-1998 STM by Art. 27]** The minimums of Subsection B may be reduced on special permit for an exception from the Planning Board, upon their determination that special circumstances render a lesser provision adequate for all parking needs. Examples of special circumstances include:
  - (a) Use of a common parking lot for separate uses having peak demands occurring at different times.
  - (b) Age or other characteristic of occupants which reduce their auto usage;
  - (c) Peculiarities of the use which render usual measures of demand invalid.<sup>1</sup>
  - (d) Characteristics of the structure, lot and proposed use.

#### B. Parking Schedule.

- (1) Residential
  - (a) Dwelling units having two or more bedrooms: two spaces.
  - (b) Dwelling units having fewer than two bedrooms - one space.
  - (c) Guesthouse, lodging house, other group accommodation: one space per two occupants.
  - (d) Hotel, motel: one space per guest unit. **[Amended 1-17-1980 STM by Art.12].**
- (2) Nonresidential buildings. **[Amended 6-8-2002 ATM by Art. 7]**
  - (a) Industrial buildings: one space per 500 square feet gross floor area.
  - (b) Retailing: one space per 250 square feet of gross leasable floor area.
  - (c) Shopping Malls and Shopping Centers.
    - [1] Under 100,000 square feet of gross floor area: one space per 250 square feet of gross floor area.
    - [2] Over 100,000 square feet of gross floor area: 400 spaces plus one space for every 400 square feet of gross floor area above 100,000 square feet.
  - (d) Office, banks: one space per 300 square feet of gross floor area
  - (e) Medical, dental clinics: one space per 200 square feet of gross floor area.

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<sup>1</sup> Editor's Note: Original Section 3.7.1(e), which immediately following this subsection, as added 1-22-1997 STM by Art. 7 and amended 10-7-1982 by Art. 14, was deleted 12-10-1992 STM by Art. 1.

- (f) Restaurant, theater, assembly hall: one space per 2.5 fixed seats; if seats are not fixed, one space per 2.5 occupants as calculated under the Building Code for maximum occupancy.
- (g) Recreation facility: 0.8 spaces per occupant as calculated under the Building Code for maximum occupancy.
- (h) Preschool facilities: one space per 200 square feet of gross floor area.
- (3) (Reserved)<sup>2</sup>
- (4) **[Amended 12-10-1992 STM by Art. 1]** Other facilities. The parking requirements for uses not listed in this section shall be determined by the Planning Board upon review of each individual application. That determination shall take into account:
  - (a) Accepted industry standards, if any for that particular use.
  - (b) The requirement of this section for similar use.
  - (c) The anticipated needs of the use of that particular property.
  - (d) The intent of this section as stated in Subsection A(1) above.
- (4) In the Mixed Use District a lot on which there was an existing building before January 1, 1998, shall be required to meet the minimum parking requirements of this section, or the parking available on that lot on January 1, 1998, whichever is less, regardless of use. **[Added 5-2-1998 STM by Art. 26]**

C. Parking area designation and location

- (1) No off-street parking area for five or more cars shall be located within the required front, side or rear yard setback areas. If no side or rear yard setback is required the minimum parking setback shall be six feet from the property line, except in the case(s) where there is a joint access or a shared parking area. **[Amended 5-5-2001 ATM by Art. 13; Amended 6-8-2002 ATM by Art. 8]**
- (2) All required parking areas, except those serving single-family residences, shall be paved, unless exempted by a special permit from the Special Permit Granting Authority (SPGA) having jurisdiction, for cases such as, but not limited to, seasonal or periodic use, where unpaved surfaces will not cause dust, erosion, or unsightly conditions. **[Amended 6-8-2002 ATM by Art. 9]**
- (3) Parking areas for five or more cars shall not require backing onto a public way.
- (4) **[Amended 5-5-2001 ATM by Art. 13]** Perimeter landscaping requirements. Parking lots for five or more cars shall include the following:
  - (a) A landscaped buffer strip shall be provided adjacent to any public road to visually separate parking and other uses from the road, where feasible and without interfering with vehicular or pedestrian safety. The buffer strip shall be equal to the front yard setback for the zoning district within which the property lies, and planted with a combination of grass, medium-height shrubs [approximately two to eight feet tall], low decumbent creeping shrubs [shrubs less than 18 inches tall] and shade trees (planted at least every 40 feet or less along the road frontage) except at site driveways where the spacing may need to be larger to accommodate safe site distance. Trees and shrubs shall be set back at street and driveway entrances, exits or intersections to allow adequate sight distance and ensure vehicular and pedestrian safety while entering or exiting the site; these site triangle areas shall be planted with grasses and low decumbent shrubs. These trees do not count towards the required parking lot trees.
  - (b) A landscaped buffer strip shall be provided adjacent to any adjoining uses, excluding areas providing shared access and parking to visually separate parking and other uses from the adjoining properties. The buffer strip shall be equal to the side and rear yard setbacks for the zoning district within which the property lies. If no side or rear yard setback is required the minimum buffer width shall be six feet. The buffer strip shall be planted with a combination of grass, medium-height shrubs [approximately two to eight feet tall, evergreen varieties preferred] and shade trees (planted at least every 20 feet along

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<sup>2</sup> Editor's Note: Former Subsection B(3), Shopping Mall parking requirements, added 12-10-1992 STM by Art. 1, was repealed 6-8-2002 ATM by Art. 7. For current provisions, see Subsection B(2)(c).

the property line). These trees do not count towards the required parking lot trees. Plantings shall include the incorporation of evergreen and deciduous plantings and shall be developed in consultation with planting arrangements approved by the Planning Board. **[Amended 6-8-2002 ATM by Art. 8]**

- (c) Plantings shall include the incorporation of evergreen and deciduous plantings and shall be developed in consultation with planting arrangements approved by the Planning Board.
- (5) Parking lots for 20 or more cars shall be interrupted with landscaped islands such that no parking surface exceeds 100 feet in width, including the area(s) used for parking aisles/stalls. A protective landscaped island shall be provided per 10 parking spaces and shall contain one shade tree with the remaining area to be planted with shrubs or groundcover. The landscape island shall be the width and depth of a parking space. The SPGA having jurisdiction may grant a waiver to the landscape island size requirement if it is demonstrated that an alternate design will still accommodate a shade tree. **[Amended 5-5-2001 ATM by Art. 13; Amended 6-8-2002 ATM by Art. 8]**
- (6) Exposed storage areas, machinery, service areas, truck-loading areas, utility buildings, trash enclosures, structures and other unsightly uses shall be screened from view from neighboring properties and streets using plantings, a wall or tight fence complemented with plantings or through some other means deemed acceptable to the permit granting authority. **[Added 5-5-2001 ATM by Art. 13; Amended 6-8-2002 ATM by Art. 8]**
- (7) All landscaped areas shall be maintained. Shrubs and trees which die shall be replaced within one growing season. **[Added 5-5-2001 ATM by Art. 13]**
- (8) Old, well-established specimen trees shall, at the discretion of the Planning Board, be protected by siting buildings and parking around or within the existing landscape. **[Added 5-5-2001 ATM by Art. 13]**
- (9) The use of bituminous paving shall be minimized. **[Added 5-5-2001 ATM by Art. 13; Amended 6-8-2002 ATM by Art. 5]**
- (10) No fill shall be placed around trees that are intolerant of fill (dogwoods, birches, conifers, oaks and sugar maples). Stockpiling of soil shall not occur within the setback areas. Soil should remain undisturbed in a ten-foot radius around any tree to be preserved. **[Added 5-5-2001 ATM by Art. 13]**
- (11) Wherever possible, all utilities shall be provided through underground connections. **[Added 5-5-2001 ATM by Art. 13]**
- (12) Parking spaces more than 300 feet from the building entrance they serve may not be counted toward fulfillment of parking requirements unless by a special permit from the SPGA having jurisdiction, determines that circumstances justify a greater separation of parking from the use(s). **[Added 6-8-2002 ATM by Art. 9]**
- D. Loading requirements. Adequate off-street loading facilities and space must be provided to service all needs created by new construction, whether through new structures or additions to old ones, and by change of use of existing structures. Facilities shall be so sized and arranged that no trucks need back on to or off a public way, or to be parked on a public way while loading, unloading or waiting to do so.
- E. New car dealerships. Areas for customers and employees parking shall conform to regulations determined for retail business facilities. Areas for storage of dealers stock (vehicles for sale) shall be determined by design capacity of property used for that purpose as shall be outlined by site plan review. These shall be based on prudent practice and shall take into account for fire equipment and servicing as may be determined by the site plan review. Variations in sizes and types of vehicles (cars, trucks, etc.) make a numerical count of vehicles allowed not feasible for this purpose. **[Added 1-31-1991 STM by Art. 9]**
- F. Used car dealerships. Number of vehicles and area to be occupied by same shall be determined by the Board of Selectmen/Building Commissioner when licenses are issued for the operation of this type of facility. **[Added 1-31-1991 STM by Art. 9]**

**§ 198-28 Floodplain and Nasketucket River Basin Districts. [Added 4-3-1971 ATM by Art. 83; amended 3-30-1972 ATM by Art 79; 5-18-1976 ATM by Art. 73; 1-22-1977 STM by Art. 4; 5-13-1978 ATM by Art. 54; 10-7-1982 STM by Art. 14; 5-4-1985 ATM by Art. 19; 5-4-1985 ATM by Art. 27; 1-22-1988 STM by Art. 4; 5-7-1988 ATM by Art. 12; 5-3-1997 STM by Art. 15; 5-2-2009 ATM by Art. 12]**

- A. The Floodplain District is herein established as an overlay district. The District includes all special flood hazard areas within the Town of Fairhaven designated as Zone A, AE, AH, AO, A99, V, or VE on the Bristol County Flood Insurance Rate Map (FIRM) issued by the Federal Emergency Management Agency (FEMA) for the administration of the National Flood Insurance Program. The Map panels of the Bristol County FIRM that are wholly or partially within the Town of Fairhaven are panel numbers 25005C0391F, 25005C0392F, 25005C0393F, 25005C0394F, 25005C0411F, 25005C0413F, 25005C0425F, 25005C0482F, 25005C0501F, 25005C0502F, 25005C0503F, and 25005C0504F dated July 07, 2009. The exact boundaries of the District may be defined by the 100-year base flood elevations shown on the FIRM and further defined by the Bristol County Flood Insurance Study (FIS) report date July 07, 2009. The FIRM and FIS report are incorporated herein by reference and are on file with the Town Clerk, Planning Board, Building Official, and Conservation Commission.
- B. The purposes of the Floodplain District are to:
  - (1) Ensure public safety through reducing the threats to life and personal injury.
  - (2) Eliminate new hazards to emergency response officials.
  - (3) Prevent the occurrence of public emergencies resulting from water quality, contamination, and pollution due to flooding.
  - (4) Avoid the loss of utility services which, if damaged by flooding, would disrupt or shut down the utility network and impact regions of the community beyond the site of flooding.
  - (5) Eliminate costs associated with the response and clean up of flooding conditions.
  - (6) Reduce damage to public and private property resulting from flooding waters.
- C. The Floodplain District is established as an overlay district to all other districts.
  - (1) All development in the district, including structural and nonstructural activities, whether permitted by right or by special permit, must be in compliance with MGL c. 131 § 40 and with the following:
    - (a) Massachusetts State Building Code sections on floodplain and coastal high-hazard areas (currently 780 CMR 120.G, Flood-Resistant Construction and Construction in Coastal Dunes).
    - (b) Wetlands protection regulations, Department of Environmental Protection (DEP) (currently 310 CMR 10.00).
    - (c) Inland wetlands restriction, DEP (currently 302 CMR 13.00)
    - (d) Coastal wetlands restriction, DEP (currently 302 CMR 12.00)
    - (e) Minimum requirements for the subsurface disposal of sanitary sewage, DEP (currently 310 CMR 15, Title 5)
    - (f) Fairhaven Wetlands Bylaw (currently Chapter 192 of the Code of the Town of Fairhaven).
  - (2) Any variance from the provisions and requirements of the above-referenced state regulations may only be granted in accordance with the required variance procedures of these state regulations.
- D. An Order of Conditions from the Conservation Commission is required before building permit shall be issued for construction or expansion by 500 square feet or more of a principal building on land less than the specified elevations above mean sea level (MSL) as provided in the Flood Insurance Rate Maps as supplied for the Town of Fairhaven, MA, by the U.S. Corps of Engineers or on any barrier beach or sand dune within 300 feet horizontally of the mean high water line.

- E. Without limiting the generality of the forgoing, failure or inability to comply with the following shall be presumed hazardous to health and safety.
- F. For all new structures or for proposed improvements which equals or exceeds 50% of market value of the unimproved structure, or for any proposed improvements the cost of which together with the cost of improvements made in the previous five calendar years equals or exceeds 50% of the market value of the structure before such improvements, the lowest floor level, including that of the basement, if provided, and structural members supporting the lowest floor must be elevated not less than the specified elevations above mean sea level (MSL) as provided in the Flood Insurance Rate Maps as supplied for the Town of Fairhaven, Massachusetts effective June 5, 1985.
  - (1) Structural requirements for construction in flood zones are as provided in the Massachusetts State Building Code, which code requirements are not waived nor superseded by the provisions of this Zoning Bylaw. In addition to those code requirements, the following requirements shall also apply within the designated flood zones for the Town of Fairhaven:
    - (a) Structures for all other uses other than dwelling units must also conform to Subsection C(1)(a).
    - (b) All new construction or substantial improvements for any use shall be located landward of the reach of mean high tide.
  - (2) Individual sewage disposal systems shall not be subject to inundation in the event of coastal flooding to six-foot elevation above mean sea level.
  - (3) Water supplies shall not be subject to more than temporary interruption or contamination, in the opinion of the Board of Health or its agents, in the event of coastal flooding to six-foot elevation above mean sea level.
  - (4) Unless protected by sea walls, pilings or other foundations shall extend not less than six feet below grade in sand and not less than four feet below grade in other materials or to such greater depth as the Building Commissioner may require to prevent scouring beneath foundations.
  - (5) Foundations shall be designed by a registered civil engineer or architect to withstand hydraulic pressure, and shall be of reinforced concrete, or if of masonry units, shall have a poured cap tied with reinforcing rods to the footings.
  - (6) No vegetation on the ocean side of the crest of any primary dune (a hill or ridge of sand piled up by the wind with no other dune between it and the ocean front) shall be destroyed, nor the crest height of such dune be lowered. All disturbed dune areas shall be stabilized with beach grasses or other means.
  - (7) The placement of mobile homes for year round or seasonal use is prohibited in the Floodplain overlay district.
- G Nasketucket River Basin District (NRB)
  - (1) The purpose of the Nasketucket River Basin District is to preserve, protect and maintain the quantity and especially the quality of the surface water and groundwater of this district which waters comprise and/or contribute to the existing and potential sources of water supply of the Town of Fairhaven and also to protect the public health, safety and general welfare of the Town residents and to conserve the natural resources of the town. The interpretations, orders, decisions, permits, judgments and findings of all parties, Town boards and departments, agents and officials in respect to all matters pertaining to this district, shall be consistent with and in accord with the spirit and intent of the above-stated purpose of this district. No facilities or activities hereafter listed in this section as restricted or prohibited shall be permitted within the Nasketucket River Basin District except by special permit from the Zoning Board of Appeals, upon demonstration by the applicant that the economic use of the property is infeasible under this rule and that water supply contamination will not result from the proposed facility or activity.
  - (2) List of restricted facilities or activities:
    - (a) Fuel or combustible hydrocarbon storage.
      - [1] Underground storage prohibited.



- [2] Aboveground storage over 55 gallons prohibited. (An exception to this restriction is the storage of heating oil inside the building to be heated)
- (b) Commercial laundries and cleaners.
  - (c) Road salt storage and application.
  - (d) Commercial parking lots.
  - (e) Gasoline stations and commercial garages (e.g. for motor vehicle sales, repair or service).
  - (f) Pesticide applications, storage or use for commercial purposes.
  - (g) Fertilizer applications, storage or for commercial purposes.
  - (h) Leaching fields, cesspools or surface or subsurface discharges of leachable wastes; (an exception to this restriction shall permit these facilities or activities within 300 feet westerly of New Boston Road, provided that all applicable wetlands, Board of Health and building permits have been previously obtained).
  - (i) Storage or stockpiling manure.
  - (j) Storage or disposal of hazardous materials or wastes as defined by EPA or OSHA regulations.
  - (k) Gravel pits or other excavations of sand, soil, rock or ledge for sale or commercial purposes (excepting normal excavations incidental to building construction, farming operations, water conservation, water retaining ponds, public utilities, installation and maintenance, and highway construction).
  - (l) Junk and salvage yards, dumps, disposal sites or landfills for solid or liquid wastes.
- (3) The preceding enumerated items [Subsection D(2)(a), fuel storage, subsection D(2)(d), commercial parking lots, Subsection D(2)(e), gasoline stations and commercial garages, Subsection D(2)(g), fertilizer applications, and Subsection D(2)(i) storage and stockpiling of manure] existing on the passage of this chapter may be continued, repaired, or maintained but without enlargement, nor addition to the existing facility, nor without changing the function of the existing structure to a function more hazardous or contaminating (in amount or type) to the basin aquifer or water supply.
- H. No person shall remove, fill, dredge or build upon any bank, marsh, swamp or flat bordering on coastal or inland water or any other land subject to tidal action or coastal flooding without a Special Permit from the Zoning Board of Appeals. Such a permit shall be issued upon confirmation that the requirements of the Wetland's Act (MGL c 131 §§ 40 & 40A) will be met and granting of the same will not be hazardous to health or safety and not harmful to the shellfish and aquatic resources of the town.<sup>3</sup>

**§ 198-29 Special permits for certain intensive nonresidential and multifamily site developments [Added 3-15-1973 ATM by Art. 78; amended 1-17-1980 STM by Art. 13; 5-9-1989 ATM by Art. 21; 5-4-1991 ATM by Art. 24]**

- A. Planning Board (SPGA). The Fairhaven Planning Board is hereby designated as the special permit granting authority (SPGA), for the development of all sites in the Apartment/Multi-Family (RC), Park (P), Wetland Resource Protection District (WRP), Business (B), Mixed Use (MU), or Industrial (I) Districts, which propose the following to be provided for under the requirements of § 198-27 Parking, loading, and landscaping: [Amended 12-10-1992 STM by Art. 1; 5-2-1998 STM by Art. 26; 6-8-2002 ATM by Art. 6; Amended 2-11-2004 STM by Art. 15]
- (1) New construction that would require a total of five (5) or more parking spaces counting existing and new demand;

<sup>3</sup> Editor's note: Former Section 3.8.5, which immediately followed this subsection, as added 4-16-1975 ATM by Art. 60, was renumbered as Section 3.8.3.2 10-7-1982 STM by art. 14 and then deleted 5-4-1985 ATM by Art. 27.

- (2) Addition(s) or enlargement(s) that would require a total of five (5) or more parking spaces counting existing and new demand;
- (3) A change of use(s) or renovation(s) that would require the addition of new parking space(s). If the existing parking spaces can meet the new demand based on the change of use(s) or renovation(s) then no special permit is required;
- (4) Re-striping of a parking lot of five (5) or more spaces that changes the existing site circulation, and/or number of parking spaces.

And in the Mixed Use (MU) District any addition of gross floor area, or any reduction in the number of available parking spaces on the site shall be subject to a special permit under this section if the proposed parking does not meet the numerical minimum required by § 198-27B.

B. Submittal Application for Special Permit shall require the filling of one copy of a special permit application and 10 prints of the site plan drawn to an adequate scale. Such plans shall contain the following.

- (1) Such Plans shall contain the following.
  - (a) Actual dimensions of the lot.
  - (b) All easements existing or proposed.
  - (c) Location and size of existing and proposed structures including any existing structures within 100 feet of the site.
  - (d) Name, width and condition of all abutting streets.
  - (e) All parking and driveway areas including curbing and planted islands.
  - (f) Existing and proposed topography at two-foot minimum contours.
  - (g) Existing and proposed water, sanitary and storm drainage facilities.
  - (h) Landscaping including sizes, types and numbers of planting and details. All site plans involving 20 or more parking spaces shall be required to have the site plan, or a separate landscaping plan, signed by a registered landscape architect. Existing trees and other unique land features shall be preserved where feasible.
  - (i) An elevation plan of all proposed buildings indicating the type of architecture to be used and how it will conform to area appearances.
  - (j) The stamps and seal of the professional land surveyor responsible for surveying the property. **[Amended 5-6-1998 ATM by Art. 20]**
  - (k) The stamp and signature of the professional engineer responsible for drawing the plan. **[Amended 5-6-1998 ATM by Art. 20]**
  - (l) The location of all wetlands on the site and within 100 feet of the site. **[Amended 5-6-1998 ATM by Art. 20]**
  - (m) The location of the River Protection Act Riverfront Resource Protection Area. **[Amended 5-6-1998 ATM by Art. 20]**
  - (n). For new construction, and for additions or renovations which increase the impervious area of a property, 10 copies of a stormwater management plan (SMP) detailing the existing environmental and hydrological conditions of the site, proposed alterations of the site and all proposed components of the drainage system and any measures for the detention, retention, or infiltration of water, for the protection of water quality and protection from flooding. As described in § 198-31.1 Stormwater Management. **[Added 5-1-1999 ATM by Art. 9]**
- (2) Review by other departments. A copy of the above required plans shall also be transmitted by the Planning Board, to the following town departments for review and comment: Department of Public Works, Fire Department and Board of Health. If no comment is made by such boards within 30 days of receipt, their

approval shall be assumed. Comments by other Departments is for the purpose of guidance to the Planning Board.

- C. Public hearing. The Planning Board will hold a public hearing on all proposed site plans/special permits within 65 days after submission to the board and a decision will be rendered by the Planning Board within 90 days following the date of the hearing. All procedural requirements for special permits will be subject to Massachusetts General Laws, Chapter 40A.
- D. Issuance of special permit
  - (1) No building permit shall be issued under this Article except by a two-thirds vote of the Planning Board and only upon determination by the Board that the proposed use is in harmony with the general purpose and intent of the chapter, and that the following standards are met by the use as designed:
    - (a) The design assures safety with respect to internal circulation and egress of traffic.
    - (b) The design provides adequate access to each structure for fire and service equipment.
    - (c) The design provides adequate utility services and drainage facilities consistent with the performance standards of the Subdivision Regulations of the Planning Board.<sup>9</sup>
    - (d) Landscape design shall conform to § 198-27C of this chapter.
    - (e) If a reduction in the number of available parking spaces on the site is proposed below the minimum required in the Mixed Use District, the Planning Board may require landscaping improvements, including the planting of trees of two-inch caliper. [Added 5-2-1998 STM by Art. 26]
  - (2) Any Special Permit issued pursuant to this § 198-29 may also impose conditions and safeguards, including a requirement that the development of the site thereunder shall be in strict compliance with the plan submitted to the Planning Board pursuant to Subsection B and any amendments to that plan which may have been approved by the Board.
- E. Issuance of building permit. No building permit shall be issued by the Fairhaven Building Commissioner pending action by the Fairhaven Planning Board or until 90 days have elapsed from the date of the public hearing. If no action has been taken by the Fairhaven Planning Board at expiration of 90 days, it shall be deemed a grant of the special permit. All building permits shall be in conformity with conditions established by the special permit.
- F. Multifamily zone areas.
  - (1) Site plan within apartment/multifamily (RC) zoned area which require a special permit shall conform to the following:
    - (a) There shall not be more than 20 dwelling in a single structure.
    - (b) No building shall be closer than its own height to a principle building.
    - (c) Parking areas shall not be located within a required front yard or within 10 feet of a lot line which ever is greater.
    - (d) No building shall be floodlighted. Drives and parking areas shall be illuminated only by shielded lights not higher than 15 feet.
  - (2) Special permit to modify multifamily zoning standards. The Fairhaven Planning Board may modify, by special permit, only the zoning standards prescribed in Subsection F(1) when the proposed plans show that the requirements are impractical for an existing structure to be modified for multi-family housing under such standards.

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<sup>9</sup> Editor's Note: See Ch. 322, Subdivision of Land

### **§ 198.29.1 Communications services [Added 11-6-1997 STM by Art. 20]**

#### **A. Purpose:**

- (1) The purpose of this section is to regulate wireless communications services so that these services may be provided with minimal harm to the public health, safety and general welfare. Specifically, the Wireless Communications Services Zoning has been created to protect the general public from potential hazards associated with the structure of wireless communications facilities and minimize the visual impacts of wireless communications facilities on residential districts within Fairhaven. This section does not apply to satellite dishes and antennas for residential use.
- (2) Applicants for a special permit to construct wireless communications service facilities are encouraged to explore alternative types of systems other than systems on newly constructed towers. Wireless communications antennas (including panels) may be mounted on or attached to existing structures (including, without limitations water towers and church steeples) by special permit provided that they conform to applicable design requirements as set forth in § 198-29.1(B).

#### **B. Design Standards for allowed uses. All requirements of the underlying zoning district shall remain in full force and effect, except as may be specifically superseded herein**

- (1) Antennas may locate on any existing guyed tower, lattice tower, monopole, electric utility transmission tower, fire tower, church steeple, clock tower or water tower provided that the facility complies with the following:
  - (a) Facade-Mount Antennas must not extend above the top of the building wall or parapet; not detract, based upon a written finding from the Massachusetts Historical Commission, from the historic significance of a structure on, or eligible for listing on, the National or Massachusetts Registers of Historic Places; and be painted so as to blend in with the existing structure as much as possible.
  - (b) Roof mounted antennas must not extend more than 15 feet above the highest point of the building; not detract, based upon a written finding from the Massachusetts Historical Commission, from the historic significance of a structure on or eligible for listing on the National Register of Historic Places; and be painted so as to blend in with the existing structure as much as possible.
  - (c) Wireless communication facilities placed on existing buildings, and any equipment associated with the facility, shall be camouflaged or screened and designed to be harmonious and architecturally compatible with the building.
- (2) The following information must be submitted for an application to be considered complete:
  - (a) A locus plan at a scale of one inch equals 200 feet which shall show all property lines, the exact location of the proposed structure(s), street landscape features, dwellings and other structures within 100 feet of the property line.
  - (b) A color photograph or rendition of the facility with its antennas and/or panels. For satellite dishes or antennas, a color photograph or rendition illustrating the dish or antenna at the proposed location is required. A rendition shall also be prepared illustrating a view of the tower, dish or antenna from the nearest street or streets.
  - (c) The following information must be prepared and signed by a registered professional engineer:
    - [1] A description of the facility and the technical, economic and other reasons for the proposed location, height and design.
    - [2] Confirmation that the facility complies with all applicable federal and state standards.
    - [3] A description of the capacity of the facility including the number and type of panels, antennas and/or transmitter receivers that it can accommodate and the basis for these calculations.
    - [4] If applicable, a written statement that the proposed facility complies with, or is exempt from applicable regulations administered by the Federal Aviation Administration (FAA), Federal

Communications Commission (FCC), Massachusetts Aeronautics Commission and the Massachusetts Department of Public Health.

[5] The applicable review and advertising fees as noted in the Zoning Bylaw.

- (3) Accessory structures housing support equipment shall be screened from the view of persons not on the lot.
- (4) There shall be no signs, except for announcement signs, “no trespassing” signs and a required sign giving a phone number where the owner can be reached on a twenty-four hour basis.
- (5) Additional parking shall not be required for roof-mounted antennas, facade-mounted antennas or for the addition of antennas or panels to a tower.
- (6) All network connections from the communications site shall be via underground land lines except to the extent of underground land lines are not feasible in the reasonable determination of the Planning Board.
- (7) Clearing of natural vegetation should be limited to that which is necessary for the construction, operation and maintenance of the tower.
- (8) Night lighting shall be prohibited unless required by state or federal law and shall be the minimum necessary.
- (9) Towers shall be set back from the lot lines a distance equal to the height of the tower except that a tower shall be no closer to the nearest lot line of a residentially zoned lot or a lot in residential use (other than the lot on which the tower is proposed) than a distance determined by the following formula:

$$(\text{height of the tower in feet})^2/40 \text{ feet}$$

- (10) One tower shall be permitted per lot.
- (11) No tower shall be more than 150 feet above the natural grade.
- (12) There shall be a minimum of one parking space for each new facility, to be used in connection with the maintenance of the facility and the site and not to be used for the permanent storage of vehicles.
- (13) Towers and facilities shall be painted a neutral, non-reflective color designed to blend with the surrounding environment.

C. Design standards for special permits. A special permit shall be granted by the Planning Board in accordance with MGL c 40A, § 9. All of the requirements of Subsection B above apply except, by special permit the SPGA may:

- (1) Allow towers nearer to the property line than the height of the tower, but no tower shall be nearer to a property line than a distance equal to  $\frac{1}{2}$  the height of the tower and no tower may be closer to the nearest lot line of a residentially zoned lot or a lot in residential use (other than the lot on which the tower is proposed) than a distance determined by the following formula:

$$(\text{height of the tower in feet})^2/40 \text{ feet}$$

- (2) Determine that a location is favorable to the clustering of facilities and may allow more than one facility on a lot in that location.
- (3) Require the maintenance of all improvements to the site including structures, fencing, plantings, and required signs; plumb and tension tests shall be available on site to enforcement authorities; that a facility must be removed within 90 days following failure to obtain suitable test specifications, loss of FCC license, or removal of communications devices coupled with disconnection of utilities and that the applicant shall be responsible for the costs to remove any tower.

D. Criteria for review and approval.

- (1) Review of applications; approvals or denials.
  - (a) The SPGA shall review all special permit applications for wireless communication facilities, roof mounted antennas or facade mounted antennas and shall issue a special permit if it finds:

- [1] That the location of the tower or device is suitable and that the size, height, and design is the minimum necessary for that purpose;
  - [2] That any façade- or roof-mounted antenna or panel located on a structure that is listed on or eligible for listing on the National or Massachusetts Registers of Historic Places shall not materially alter the character-defining features, distinctive construction methods or original historic materials of the building. Any alteration made to a structure that is listed on or eligible for listing on the National or Massachusetts Registers of Historic Places to accommodate a facade or roof mounted antenna shall be fully reversible;
  - [3] That the applicant for a special permit has demonstrated a good faith effort to co-locate with other carriers or to façade- or roof-mount the wireless communication facility including in such good faith effort a survey of all existing structures that may be feasible sites for mounting or collocation; and contact with all other licensed carriers for operating in the contiguous communities and the SPGA finds no technically or economically equal collocation is available; and
  - [4] That the proposed tower or device is in compliance with federal and state requirements regarding aviation safety.
- (b) The findings, including the basis for such findings, of the Board shall be stated in the written description of approval, conditional approval or denial of the application for special permit.
- (2) The Board shall also impose, in addition to any applicable conditions specified in the chapter, such conditions as it finds reasonably appropriate to safeguard the neighborhood or otherwise serve the purposes of this chapter, including, but not limited to: screening, lighting, fences, modification of the exterior appearance of the structures, limitation upon size, method of access or traffic features, parking, removal upon cessation of use, or other requirements. Such conditions shall be imposed in writing, and the applicant may be required to post bond or other surety for compliance with said conditions in any amount satisfactory to the Board.
  - (3) The special permit is granted for a period of two years and shall lapse if substantial use or construction has not commenced by such a date, except for good cause shown (including but not limited to, appeals of the grant of the special permit or litigation enjoining the construction under the permit), and provided further that such construction, once begun, shall be actively and continuously pursued to completion within a reasonable time.
  - (4) The board shall request drawings and studies which show the ultimate appearance and operation of the personal wireless service facility at full build-out.
  - (5) The board may require the proponent to provide or pay for engineering services to evaluate proposals submitted; determining flexibility of geographic location, loading capacities of structures and architectural review of camouflage techniques.

## **§ 198.29.2. Assisted Living Communities Overlay District [Added 5-6-1998 ATM by Art. 19]**

- A. Purpose. The purpose of this section is to promote the availability of assisted living residences in the town of Fairhaven; to provide services for the elderly or elderly disabled persons; to encourage residential settings that promote the dignity, individuality, privacy and decision-making of such persons. For the purpose of this section an assisted living residence is a building or buildings that provide living assistance in a residential setting for people 55 years of age or older. These facilities shall provide or arrange for the provision of the services required in MGL c. 19D, § 10.<sup>10</sup>

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<sup>10</sup> Note:

- a. Opportunities for socializing and access to community resources.
- b. For all residents whose service plans so specify, such services, supervision of and assistance with activities of daily living including services such as, assistance with bathing, dressing, medication reminders and ambulation.
- c. Up to three meals daily.
- d. Housekeeping.

B. Special permit granting authority. The special permit granting authority for this section shall be the Fairhaven Planning Board.

C. Requirements.

- (1) All requirements of the underlying zoning district shall remain in full force and effect, except as may be specifically superseded herein.
- (2) The minimum size of the lot for such use in Residential Districts, the Business and Mixed Use District shall be five acres. **[Amended 11-23-1998 STM by Art. 23]**
- (3) Each dwelling shall require 5,000 square feet of lot area in the RR, RA and RB zones and 3,500 square feet of lot area in RC, B and MU Zones.
- (4) A maximum of 60 dwelling units in any one building will be allowed.
- (5) A maximum of three buildings will be allowed on any site.
- (6) Assisted Living Residences shall comply with the following dimensional requirements: front setback 50 feet; side setback 25 feet; rear setback 50 feet. Frontage, lot coverage and maximum building height shall conform to the requirements of the district where such use is located.
- (7) Assisted Living Residences shall be served by municipal water and sewer.
- (8) A properly screened area must be provided for storage of trash and recyclable materials. Outside storage areas or enclosures shall be kept clean and shall be large enough to accommodate the storage of all garbage and refuse containers. Garbage and refuse containers, dumpsters, and compactor systems shall be stored on or above a smooth surface of nonabsorbent material such as concrete or asphalt. The property owner shall be financially and contractually responsible for waste and recyclable material removal.
- (9) Assisted Living Residences may have as accessory uses within the residential building such commercial sales and services enterprises as may be desirable for the convenience of the residents including, without limitation, barbers/hairdressers, retail sales, restaurants, snack bars, gift shops, laundry services, banking and financial services, business and professional offices (the "Accessory Uses") subject to the following conditions:
  - (a) Accessory Uses shall be primarily for the use and convenience of the residents and staff of an Assisted Living Residence;
  - (b) Accessory Uses shall not exceed 10% of the total floor area of the residence;
  - (c) No Accessory Use, other than a restaurant or a comprehensive outpatient rehabilitation facility may occupy more than 1,000 square feet of floor area;
  - (d) Capacity of a restaurant shall not exceed 60 seats; and
  - (e) Accessory uses shall be wholly within a residential structure and shall have no exterior advertising display.
- (10) Parking requirements for assisted living residences shall include a minimum of one parking space for every two units.
- (11) Assisted living residences shall provide a passenger drop-off/pick-up area for every residential building.
- (12) Assisted living residences shall provide one off-street delivery space for every residential building. No portion of the off-street parking area shall be considered as an off-street delivery area.

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- e. For all residents whose service plans so specify, self-administered medication management by personnel meeting standards for professional qualifications and training set forth in the state assisted living act regulations.
  - f. Ability to provide timely assistance to residents and to respond to urgent or emergency needs, by the presence of twenty-four hour per day on-site staff capability, by the provision of personal emergency response devices for all residents or similar means for the purpose of signaling such staff, and by such other means as the department may deem necessary for each assisted living residence, taking into account the service plans of its residents.
  - g. Laundry service at a fee if necessary.

### **§ 198.29.3. Sexually oriented business [Added 11-23-1998 STM by Art. 25]**

- A. Purpose and intent. It is the purpose of this article to promote the public health, safety and general welfare and to prevent problems of blight and deterioration which accompany and are brought about by the concentration of sexually oriented businesses. It is intended that the provisions of this amendment have neither the purpose nor the effect of imposing limitation or restriction on the content of any communicative materials, including sexually oriented materials; and, it is not the intent nor effect of this section to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market; and, neither is it the intent nor effect of this section to condone or legitimize the distribution of obscene material.
- B. Special permit granting authority. The Planning Board shall be the Special Permit Granting Authority (SPGA) under this section in accordance with MGL c. 40A, §§ 9 and 9A
- C. Definitions of sexually oriented businesses. A sexually oriented business is any place of business at which any of the following activities is conducted:

ADULT BOOKSTORE - An establishment having as a substantial or significant portion of its business sales, inventory or stock in trade, books, magazines and other matter which are distinguished or characterized by their emphasis depicting, describing or relating to sexual conduct or sexual excitement as defined in MGL c. 272, § 31.

ADULT PARAPHERNALIA STORE - An establishment having as a substantial or significant portion of its business sales, inventory or stock in trade, devices, objects, tools, or toys which are distinguished or characterized by their association with sexual activity, including sexual intercourse, sexual conduct or sexual excitement as defined in MGL c. 272, § 31.

ADULT VIDEO STORE - An establishment having as a substantial or significant portion of its business sales, inventory or stock-in-trade, videos, movies or other film material which are distinguished or characterized by their emphasis depicting, describing or relating to sexual conduct or sexual excitement as defined in MGL c. 272, § 31.

ADULT MOTION PICTURE THEATER - An enclosed theater building used for presenting material distinguished by an emphasis on matter depicting, describing or relating to sexual conduct or sexual excitement as defined in MGL c. 272, § 31.

ADULT MOTION PICTURE ARCADE - Any place to which the public is permitted or invited where electronically, electrically or mechanically controlled still- or motion-picture machines, projectors or other image-producing devices are maintained to show images to five or fewer persons per machine at any one time, and in which a substantial portion of the total presentation time of the images so displayed is devoted to the showing of material which is distinguished or characterized by its emphasis depicting, describing or relating to sexual conduct or sexual excitement as defined in MGL c. 272, § 31.

ADULT CABARET - A nightclub, bar, restaurant or similar establishment which during a substantial portion of the total presentation time features live performances which are distinguished or characterized by its emphasis depicting, describing or relating to sexual conduct or sexual excitement as defined in MGL. c. 272, § 31.

ADULT MOTEL - A motel or similar establishment offering public accommodations for any form of consideration which provides patrons with closed circuit television transmissions, films, motion pictures, video cassettes, slides or other photographic reproductions, a substantial portion of the total presentation time of which are distinguished or characterized by its emphasis depicting, describing or relating to sexual conduct or sexual excitement as defined in MGL. c. 272, § 31.

ADULT THEATER - A theater, concert hall, auditorium or similar establishment either indoor or outdoor in nature, which, for any form of consideration, regularly features live performances, a substantial portion of the total presentation time of which are distinguished or characterized by its emphasis depicting, describing or relating to sexual conduct or sexual excitement as defined in MGL c. 272, § 31.



**NUDE MODEL STUDIO** - A place where a person who appears in a state of nudity or displays male genitals in a state of sexual arousal and/or the vulva or more intimate parts of the female genitals and is observed, sketched, drawn, painted, sculptured, photographed or similarly depicted by other persons who pay any form of consideration; and such display is distinguished or characterized by its emphasis depicting, describing or relating to sexual conduct or sexual excitement as defined in MGL c. 272, § 31.

**OBSCENE ENTERTAINMENT** - All entertainment which is obscene within the meaning of that term as defined by MGL c. 272, § 31, and final adjudication of a court of competent jurisdiction.

**SEXUAL ENCOUNTER CENTER** - A business or commercial enterprise that as one of its primary business purposes, offers for any form of consideration: (a) physical contact in the form of wrestling or tumbling between persons of the opposite sex; or (b) activities between male and female persons and/or persons of the same sex when one or more persons is in the state of nudity; or where the activities in (a) or (b) are distinguished or characterized by its emphasis depicting, describing or relating to sexual conduct or sexual excitement as defined in MGL c. 272, § 31.

**SUBSTANTIAL OR SIGNIFICANT PORTION** shall mean that any one of the following apply 33% or more of the business inventory or stock of merchandise for sale, rental, distribution or exhibition during any period of time; or 33% or more of the annual number of gross sales, rentals, or other business transactions; or 33% or more of the annual gross business revenue; or 33% or more of the hours during which the establishment is open.

- D. Requirements regarding the allowed locations and location restrictions of sexually oriented businesses.
- (1) All obscene entertainment, including bookstores and motion picture theaters that make available obscene materials, are prohibited within the town.
  - (2) Sexually oriented businesses, as defined above, shall be permitted only in the Industrial and Business zones as provided for in § 198-16, provided that all other regulations, requirements and restrictions for the zone in which the sexually oriented business is to be located are met; and, no sexually oriented business shall be permitted within:
    - (a) Five hundred feet of another existing sexually oriented business or one for which a building permit has been applied for. The distance between any two sexually oriented business shall be measured in a straight line, without regard to intervening structures, from the closest property line of each property;
    - (b) One thousand feet of any public, parochial or private school, kindergarten, or state-approved day-care center, this setback shall include the grounds on which said public, parochial or private school, kindergarten or state-approved day-care center is located on. The distance between any sexually oriented business and any public, parochial or private school, kindergarten or state-approved day care center shall be measured in a straight line, without regard to intervening structures, from the closest property line of each property;
    - (c) One thousand feet from municipal and private park and recreational facilities existing as of November 11, 1998, including but not limited to Livesey Park, Fort Phoenix Park and State Reservation, the Fairhaven Bicycle Path, the Little Bay Conservation Area, Macomber Pimental Park, Bowlers Little League Field, Fairhaven Little League Field, Cushman Park, West Island Beach, Pease Park and West Island State Reservation. The distance between any sexually oriented business and park and recreational facility shall be measured in a straight line, without regard to intervening structures, from the closest property line of each property;
    - (d) One hundred feet of a residential district. The distance between a residential district and a sexually oriented business shall be measured in a straight line, without regard to intervening structures, from the closest property line of the residential property to the closest exterior structural wall or parking space associated with the sexually oriented business.
    - (e) Three hundred feet of Bridge Street between Route 6 and Mill Road;
    - (f) Two hundred feet of Route 240 between Interstate 195 and Route 6; and
    - (g) The bounds of Long Island.

- E. Site development standards. Pursuant to MGL c. 40A, § 9A, the following site improvements and amenities are required, in addition to the special permit requirements found in § 198-29, Special permits for certain intensive nonresidential and multifamily site developments, to protect public safety and neighboring property values. The Planning Board is empowered hereunder to review and approve permit applications for sexually oriented businesses and impose reasonable restrictions for buffering, outdoor lighting, parking, adequate ingress and egress from the site off of and onto public roads, pedestrian movement, and to provide for appropriate landscaping and building aesthetics as the special permit granting authority and to avoid site development layout which may result in negative environmental impacts.
- (1) Dimensional requirements: Any building or structure containing a sexually oriented business shall meet the setback requirements and other dimensional controls of the appropriate district as specified in this chapter. For any property proposed to contain a sexually oriented business, the applicant for a special permit for such use shall demonstrate that the entire property shall comply with these requirements and controls following the establishment of such use thereon.
  - (2) Parking and loading requirements. On-site parking and loading shall be provided in accordance with the requirements of § 198-27 of this chapter. For any property proposed to contain a sexually oriented business, the applicant for a special permit for such use shall demonstrate that the entire property shall comply with these requirements and controls following the establishment of such use thereon.
  - (3) Site screening: Rear and side property lines shall be screened from any neighboring uses or properties. Screening shall be by a solid stockade fence that is 3 ½ feet tall within 20 feet of the street and six feet tall elsewhere on the property consistent with § 198-19 of the Fairhaven Zoning Bylaw, plus a densely vegetated planting to include evergreens as well as deciduous tree varieties.
  - (4) Site lighting shall be maintained at a minimum lumen as determined by the Fairhaven Police Department to ensure adequate visibility on the property to ensure public safety. Light standards may not exceed 35 feet in height.
  - (5) No portion of the front, rear or side lines of a sexually oriented business, appurtenances or accessory uses, shall hereafter be placed within 100 feet of any residential district. No driveway to such premises shall be in any part within 100 feet of any residential district. No such premises shall have any driveway entrance or exit for motor vehicles within 300 feet of the property used by any public library or church.
  - (6) Signs. All signs for any sexually oriented business must meet the requirements of § 198-26 of this chapter except that no advertising signs shall be located within 20 feet of a public or private way and must be set back a minimum of 20 feet from all property lines. In addition, no advertisement, display or other promotional material which contains sexually explicit graphics or sexually explicit text, as defined in MGL c. 272, § 31, shall be visible to the public from any public way, including but not limited to sidewalks, pedestrian walkways, highways or bicycle paths. Signage for sexually oriented businesses shall not contain any moving, flashing or animated lights, or visible moving or movable parts. No sexually oriented business may display flashing lights visible from outside the establishment.
  - (7) Appearance of buildings for sexually oriented businesses shall be consistent with the appearance of buildings in similar (but not specifically adult) use in Fairhaven, not employing unusual color or building design which would attract attention to the premises.
  - (8) If the sexually oriented business allows for the showing of films or videos within the premises, the booths in which the films or videos are viewed shall not be closed off by curtains, doors or screens. All booths must be able to be clearly seen from the center of the establishment.
  - (9) All building openings, entries and windows shall be screened in such a manner as to prevent visual access to the interior of the establishment by minors.
  - (10) No sexually oriented business shall be allowed to disseminate or offer to disseminate adult matter or paraphernalia to minors or suffer minors to view displays or linger on the premises.

- (11) The applicant for permission to operate any sexually oriented business must file his application on a form approved by the special permit granting authority with the special permit granting authority and the Town Clerk. Such form shall contain information as set forth in the rules and regulations established by the special permit granting authority, but shall include as a minimum:
    - (a) Name and address of the legal owner of the sexually oriented business;
    - (b) Name and address of all persons having lawful, equity or security interests in the sexually oriented business;
    - (c) Name and address of the manager;
    - (d) The number of proposed employees;
    - (e) Proposed security precautions; and
    - (f) Physical layout of the premises in a format established by the special permit granting authority.
  - (12) No special permit for a sexually oriented business shall be issued to any person convicted of violating MGL c. 119, § 63, or MGL c. 272, § 28, or are listed on the Sex Offender Registry.
  - (13) Any sexually oriented business special permit issued under this by-law shall require that the owner of such business shall supply on a continuing basis to the Building Commissioner any change in the name of the record owner of address or any change in the name of the current manager; and that failure to comply with this provision shall result in the immediate revocation of such special permit. If anyone so identified is or has been convicted of violating MGL c. 119, § 63, or MGL c. 272, § 28, or is listed on the Sex Offender Registry, such special permit shall be immediately null and void.
  - (14) No sexually oriented business special permit shall be issued under this chapter, become valid or in full force and effect until and unless the owner of the property containing such sexually oriented business shall supply to the Planning Board a notarized statement agreeing to all terms and conditions of said sexually oriented business special permit.
  - (15) Procedural requirements for special permits. Special permits shall only be issued following public hearings held within 65 days after filing of an application with the special permit granting authority, a copy of which shall forthwith be given to the City or Town Clerk by the applicant.
  - (16) Action within 90 days after hearing or special permit deemed granted. Special permit granting authorities shall act within 90 days following a public hearing for which notice has been given by publication or posting and by mailing to all parties in interest. Failure by a special permit granting authority to take final action upon an application for a special permit within said 90 days following the date of public hearing shall be deemed to be a grant of the permit applied for.
  - (17) Lapse of special permit as permitted in MGL c. 40A, § 9A, special permit granted under this section shall lapse within two years, including such time required to pursue or await the determination of an appeal as referred to in MGL c. 40A, § 17, from the grant thereof, if a substantial use thereof has not sooner commenced except for good cause or, in the case of permit for construction, if construction has not begun by such date except for good cause.
- F. Severability. The invalidity of any section or provision of this article shall not invalidate any other section or provision thereof.

#### **§ 198-29.4 Special permit for certain existing conditions in the Wetland Resource Protection District [Added 5-1-99 ATM by Art. 8]**

- A. Purpose. The purpose of this section is to relieve the owner of a lot in the Wetland Resource Protection District from a hardship or potential for hardship where the uses designated for that district may prove impractical because of the nature of the property, which may include the existence of a structure or structures on the lot.
- B. Special permit granting authority. The special permit granting authority for this section shall be the Fairhaven Planning Board.

C. Requirements.

- (1) The Fairhaven Planning Board may issue a special permit allowing a lot in the Wetland Resource Protection District to be used in conformance with the provisions of the Zoning Bylaw as they relate to the Mixed Use District, if the Board determines that the limitations upon use imposed by the Wetland Resource Protection District would cause a hardship or potential for hardship because of the nature of the lot, which may include the existence of a structure or structures on the lot.
- (2) The condition to which the hardship or potential hardship relates must be a structure in existence on January 1, 1999, or a condition on the land which was in existence on January 1, 1999, and in either event the structure or condition must not have been substantially changed since January 1, 1999, unless the change was beyond the control of the property owner, or if within the owner's control, did not substantially add to the hardship or potential hardship. The property owner must document the hardship or potential hardship for the Planning Board; said documentation shall include a review of the allowed and permitted uses within the Wetland Resource Protection District and the nature of the conditions which were in existence on January 1, 1999, that preclude the use of the property for the allowed and permitted uses in the district. The presence of wetland resource areas shall not be considered grounds for a hardship related to the condition of the land under this section.
- (3) A special permit under this section may be allowed only when all procedural and substantive requirements for the proposed use under the provisions of the Mixed Use District and the requirements of § 198-8 have been met.
- (4) Where the use proposed under this section is a use authorized by special permit in the Mixed Use District, the application for special permits shall be merged under this section, and the Planning Board shall be the Special Permit Granting Authority for those permits.
- (5) A special permit under this section shall not be barred by the discontinuance or abandonment of a prior use on the lot.
- (6) The presence of the hardship or potential for hardship shall allow for the application of the uses in the Mixed Use District as found in § 198-16, Use Regulation Schedule. The intensity of use requirements for the Wetland Resource Protection District, as found in § 198-18, Intensity of Use Schedule, shall apply to all development in the district regardless of the presence of or potential for hardship.

**§ 198-29.5 Wind Energy Facilities [Added 5-4-2013 ATM by Art. 19]**

- A. Purpose. The purpose of this by-law is to encourage the use of wind energy and provide for the construction and operation of WEF and to provide standards for the placement, design, construction, monitoring, modification and removal of WEF that address public safety, minimize impacts on scenic, natural and historic resources of the town and provide adequate financial assurance for decommissioning. The provisions set forth in this section shall take precedence over all other sections when considering applications related to the construction, operation, and/or repair of WEF.
- B. Applicability. This section applies to all municipal and private Utility-Scale, On-Site WEF, and Small Wind Energy Systems, proposed to be constructed after the effective date of this section, but not to facilities fully constructed prior to the adoption of this bylaw. This section also includes Building Integrated WEF, and physical modifications to existing WEF that materially alter the type, configuration, location or size of such facilities or other equipment.
- C. Special Permit Granting Authority. The Planning Board shall be the Special Permit Granting Authority (SPGA) for WEF in all districts.
- D. Validity: The invalidity of any provision of this section shall not invalidate any other section or provision thereof.
- E. Application for Special Permit. The following information must be submitted for an application to be considered complete:

- (1) A locus plan at a scale of 1" = 200' which shall show all property lines, the exact location of the proposed structure(s), street landscape features, dwellings and other structures within 500 feet of the wind turbine from the proposed tower location
- (2) A color photograph or rendition of the WEF. A rendition shall also be prepared illustrating a view of the WEF from the nearest street or streets in all directions.
- (3) The following information must be prepared and signed by a registered professional engineer licensed to practice in the Commonwealth of Massachusetts:
  - (a) A description of the WEF and the technical, economic and other reasons for the proposed location, height and design.
  - (b) Confirmation that the WEF complies with all applicable Federal and State standards, including but not limited to US Fish and Wildlife Service, Massachusetts Environmental Policy Act (MEPA) and Environmental Notification Form (ENF) by Massachusetts Executive Office of Environmental Affairs, Access Approval by Massachusetts Highway Department and Massachusetts Historic Commission.
  - (c) If applicable, a written statement that the proposed WEF complies with, or is exempt from applicable regulations administered by the Federal Aviation Administration (FAA), Massachusetts Aeronautics Commission and the Massachusetts Department of Public Health.
  - (d) Fairhaven Conservation Commission. The applicant must file a Notice of Intent if within the wetland resource areas or if within 100 feet buffer zone.
  - (e) An analysis of the shadow flicker of the WEF shall be provided.
  - (f) A statement listing existing and maximum projected sound levels from the WEF.
  - (g) Existing areas of tree cover, including average height of trees, on the site parcel and adjacent parcels within 300 feet.
  - (h) Manufactures specifications for sound and documentation for compliance with Section L below.
  - (i) Abutter notice additional requirements. The applicant shall notify all abutting property owners whose property falls within three hundred feet (300 feet) of the outermost setback area, but in no case less than 300 feet of the applicant's property line to the nearest property owner.
- (4) Proof of Liability Insurance. The applicant shall be required to provide evidence of liability insurance in an amount, and for the duration, sufficient to cover loss or damage to persons and property occasioned by the failure of the facility.
- (5) Utility Notification. No Special Permit and/or site plan for the installation of a WEF shall be approved until evidence has been given that the electric utility company has been informed of the customer's intent to install an interconnected customer-owned generator, and copies of site plans showing the proposed location have been submitted to the utility for review. An Interconnection Agreement pursuant to applicable tariff and consistent with the requirements for other generation must be executed with the utility prior to any construction. Off-grid systems shall be exempt from this requirement, unless they are proposed to be located within setback distance from the sideline of an existing utility Right-of-Way (ROW).
- (6) Meteorological Towers (MET's) shall be permitted under the same standards as a small wind system, except that the requirements apply to a temporary structure. A permit for a temporary met tower shall be valid for a maximum of 3 years after which an extension may be granted. Small anemometers installed directly on buildings shall not require a building or Special Permit. No site plan review shall be required for met towers. MET's shall not be located within setback distance from the sideline of any utility ROW.
- (7) Site Control. At the time of its application for a special or building permit, the applicant shall submit documentation of actual or prospective control of the project site sufficient to allow for installation and use of the proposed facility. Documentation shall also include proof of control over setback areas and access roads, if required. Control shall mean the legal authority to prevent the use or construction of any structure for human habitation, or inconsistent or interfering use, within the setback areas.

F. General Siting and Design Standards. Unless otherwise expressly provided by this section requirements of the underlying zoning district shall apply and in addition the following design standards shall apply:

- (1) Accessory structures housing support equipment shall be screened from the view of persons not on the parcel.
- (2) Fencing shall be provided to control access to the site of the WEF and accessory structures.
- (3) Signs. There shall be no signs, except announcement signs, no trespassing signs or any signs required to warn of danger. A sign is required that identifies the owner and operator with an emergency telephone number where the owner and operator can be reached on a twenty-four hour basis.
- (4) All utility connections from the WEF site shall be underground except to the extent that underground utilities are not feasible in the reasonable determination of the SPGA.
- (5) Clearing of natural vegetation shall be limited to that which is necessary for the construction, operation and maintenance of the WEF.
- (6) Night lighting shall be prohibited unless required by state or federal law and shall be the minimum necessary.
- (7) There shall be a minimum of one parking space to be used in connection with the maintenance of the WEF and the site; however, it shall not to be used for the permanent storage of vehicles.
- (8) Wind facilities shall be painted a neutral, non-reflective color designed to blend with the surrounding environment.
- (9) Removal. The owner, his successors in interest shall remove any WEF the use of which has been discontinued. At the time of removal, the WEF site shall be restored to its natural state or to any other legally authorized use. All wind turbines and appurtenant structures shall also be removed. The SPGA shall require that a bond, escrow account or other suitable surety be established to ensure adequate funds are available for removal. Municipal wind facilities shall be exempt from the surety requirement.

G. Criteria for Review and Approval.

- (1) A Special Permit shall be granted under this section if the SPGA finds in writing that each of the design standards set forth above have been met and that the location of the WEF is suitable and that the size, height and design are the minimum necessary for that purpose
- (2) The SPGA shall also impose, in addition to any applicable conditions specified in this section, such conditions as it finds reasonably appropriate to safeguard the neighborhood or otherwise serve the purposes of this section, including, but not limited to: screening, lighting, fences, modification of the exterior appearance of the structures, limitation upon size, method of access or traffic features, parking, removal upon cessation of use or other requirements. Such conditions shall be imposed in writing and the applicant may be required to post bond or other surety for compliance with said conditions in an amount satisfactory to the SPGA.
- (3) The Special Permit shall lapse if substantial use or construction has not commenced within two years of the date of issuance, except for good cause shown (including but not limited to appeals of the grant of the Special Permit or litigation enjoining the construction under the permit), and provided further that such construction, once begun, shall be actively and continuously pursued to completion within a reasonable time.

H. WEF - Utility-Scale. Requirements

- (1) Financial Surety. The SPGA may require the applicant for utility scale wind facilities to provide a form of surety, either through escrow account, bond or otherwise, to cover the cost of removal or failure to maintain in the event the town must remove or maintain the facility, of an amount and form determined to be reasonable by the Special Permit granting authority, but in no event to exceed more than 125 percent of the cost of removal and compliance with the additional requirements set forth herein, as determined by the applicant. Such surety will not be required for municipally or state-owned facilities. The applicant shall

submit a fully inclusive estimate of the costs associated with removal, prepared by a qualified engineer. The amount shall include a mechanism for Cost of Living Adjustment.

- (2) Size. The maximum nameplate rating shall not exceed 660kW.
- (3) The WEF shall be located on a parcel of land that contains a minimum of ten (10) acres. The SPGA may allow more than one wind turbine if a determination is made that the location is favorable to the clustering of wind turbines.
- (4) Height. The WEF shall have a maximum tip height (MTH) no greater than 265 feet above the current grade of the land.
- (5) Setbacks. The WEF shall, at all times while in operation, meet the three required setbacks as follows:
  - (a) a distance equal to one and one-tenth (1.1) times the (MTH) of the wind turbine from principal structures, critical infrastructure such as but not limited to power lines, natural gas or distribution infrastructure.
  - (b) a distance equal to four (4.0) times the (MTH) of the turbine from the nearest off site residential, commercial structure or public way.
  - (c) a distance equal to one and one-half (1.5) times the (MTH) of the turbine from the nearest non participating property line and private way(s) that are not part of the WEF.
- (6) Setback Waiver. The SPGA may allow non participating property within the minimum required setbacks, only if the SPGA agrees to the condition based on site-specific considerations and is provided evidence of written consent of the all the affected abutting property owner(s) who are in agreement.
  - (a) The SPGA, in its discretion, shall be authorized to waive the setback, sound and shadow flicker provisions of this Section to the extent these provisions affect a non-participating property, provided that the applicant submits the request in writing, accompanied by an affidavit signed by every non-participating property owner(s) inside the required setback area. The affidavit shall contain the non-participating property owner's acknowledgement of the setback, sound or shadow flicker requirements of this Section and what is proposed in lieu thereof, describe the impact on the non-participating property owner(s), and state the non-participating property owner's support for the applicant's waiver request. A non-participating property owner's affidavit shall be made a part of the Special Permit decision and shall be recorded separately with the Bristol County Registry of Deeds (Southern District) at the same time that the Special Permit decision is recorded to provide notice to all subsequent purchasers of the non-participating property of the waiver(s) granted.
- (7) Visualizations. The SPGA may select up to four sight lines, including from the nearest building with a view of the WEF, for pre- and post-construction view representations. Sites for the view representations shall be selected from populated areas or public ways within a 2-mile radius of the proposed WEF. View representations shall have the following characteristics:
  - (a) View representations shall be in color and shall include actual pre-construction photographs and accurate post-construction simulations of the height and breadth of the WEF (e.g. superimpositions of the WEF on to photographs of existing views).
  - (b) All view representations will include existing, proposed, buildings or tree coverage.
  - (c) Include description of the technical procedures followed in producing the visualization (distances, angles, lens, etc.).
  - (d) Site Balloon Test. The applicant shall arrange to fly a brightly colored, four foot balloon at the MTH and at the proposed tower location. The days and hours will be agreed to by the SPGA and the applicant beforehand. The dates and times of the test will be advertised in the local newspaper.
- (8) Location Map. The applicant shall submit, to the SPGA, a copy of a portion of the most recent USGS Quadrangle Map, at a scale of 1:25,000, showing the proposed facility site and the area within at least two miles from the facility. Zoning district designation for the subject parcel should be included, however a copy of a zoning map with the parcel identified is suitable.

- (9) Operation & Maintenance Plan. The applicant shall submit a plan for maintenance of access roads and storm water controls, as well as detailed procedures for operational maintenance of the WEF that are in accordance with manufacturer's recommendations for the period of expected operation of such facility.
- (10) Annual Operations & Maintenance (O&M) Report. A report shall be filed annually with the Planning Board for the facilities permitted under this section. Required report to be delivered beginning at the end of the first twelve months facilities are placed into operation and thereafter every year on anniversary date that the facilities are in operation. Copies of the Annual O&M Report Form are available at the Planning Board's Office.
- (11) Landscape Plan. A plan indicating all proposed changes to the landscape of the site, including temporary or permanent roads or driveways, grading, vegetation clearing and planting, exterior lighting, other than FAA lights, screening vegetation or structures. Lighting shall be designed to minimize glare on abutting properties and except as required by the FAA be directed downward with full cut-off fixtures to reduce light pollution.
- (12) Independent Consultants. Upon submission of an application for a Special Permit, the SPGA shall be authorized to hire outside consultants, paid for by the applicant.
- (13) A WEF requiring guy wires for support shall not be permitted.

I. WEF - On-Site. Requirements.

- (1) Size. The maximum nameplate rating shall not exceed 200kW.
- (2) Height. The WEF shall have a MTH no greater than 165 feet above the current grade of the land.
- (3) Setbacks. The WEF shall, at all times while in operation, meet the three required setbacks as follows:
  - (a) A distance no closer than 2.0 times the MTH, from the nearest property line.
  - (b) A setback area, computed as a circle with the tower at its center and a radius equal to the MTH, shall be required from building or buildings which are on the same parcel(s) and which are served by the WEF.
  - (c) A setback equal to 3.0 times the MTH from the nearest residential structure.
- (4) Setback Waiver. The SPGA may allow non participating property within the minimum required setbacks, only if the SPGA agrees to the condition based on site-specific considerations and is provided evidence of written consent of the all the affected abutting property owner(s) who are in agreement.
  - (a) The SPGA, in its discretion, shall be authorized to waive the setback, sound and shadow flicker provisions of this Section to the extent these provisions affect a non-participating property, provided that the applicant submits the request in writing, accompanied by an affidavit signed by every non-participating property owner(s) inside the required setback area. The affidavit shall contain the non-participating property owner's acknowledgement of the setback, sound or shadow flicker requirements of this Section and what is proposed in lieu thereof, describe the impact on the non-participating property owner(s), and state the non-participating property owner's support for the applicant's waiver request. A non-participating property owner's affidavit shall be made a part of the Special Permit decision and shall be recorded separately with the Bristol County Registry of Deeds (Southern District) at the same time that the Special Permit decision is recorded to provide notice to all subsequent purchasers of the non-participating property of the waiver(s) granted.
- (5) Site Plan. Shall be a plan of the proposed WEF site, with existing and proposed topography at two-foot minimum contours, at an appropriate scale showing the following:
  - (a) Property lines for the site parcel and adjacent parcels within 500 feet.
  - (b) Outline of all existing buildings, including purpose (e.g. residence, garage, etc.) on site parcel and all adjacent parcels within 500 feet. Include distances from the WEF to each building shown.



- (c) Location of all roads, public and private on the site parcel and adjacent parcels within the setback distance of 1.2 times the blade tip height, and proposed roads or driveways, either temporary or permanent.
  - (d) Existing areas of tree cover, including average height of trees, on the site parcel and adjacent parcels within the setback distance of 3.0 times the MTH.
  - (e) Proposed location and design of WEF, including all turbines, ground equipment, appurtenant structures, transmission infrastructure, access, fencing, exterior lighting, etc.
- (6) Visualizations. The SPGA may select up to three sight lines, including from the nearest building with a view of the WEF, for pre- and post-construction view representations. Sites for the view representations shall be selected from populated areas or public ways within a 2-mile radius of the proposed WEF. View representations shall have the following characteristics:
- (a) View representations shall be in color and shall include actual pre-construction photographs and accurate post-construction simulations of the height and breadth of the WEF (e.g. superimpositions of the WEF onto photographs of existing views).
  - (b) All view representations will include existing, or proposed, buildings or tree coverage.
  - (c) Include description of the technical procedures followed in producing the visualization (distances, angles, lens, etc.).
  - (d) Site Balloon Test. The applicant shall arrange to fly a brightly colored, four foot balloon at the MTH and at the proposed tower location. The days and hours will be agreed to by the SPGA and the applicant beforehand. The dates and times of the test will be advertised in the local newspaper.
- (7) Compliance Documents. The applicant shall provide the following:
- (a) Description of financial surety,
  - (b) Proof of liability insurance
  - (c) Certification of height approval from the FAA,
  - (d) Manufactures specifications for sound and documentation for compliance with Section L below.
- (8) Landscape Plan. A plan indicating all proposed changes to the landscape of the site, including temporary or permanent roads or driveways, grading, vegetation clearing and planting, exterior lighting, other than FAA lights, screening vegetation or structures. Lighting shall be designed to minimize glare on abutting properties and except as required by the FAA be directed downward with full cut-off fixtures to reduce light pollution.
- (9) Independent Consultants. Upon submission of an application for a Special Permit, the SPGA shall be authorized to hire outside consultants, paid for by the applicant.
- (10) A WEF requiring guy wires for support shall not be permitted.
- (11) Annual Operations & Maintenance Report. A report shall be filed annually with the Planning Board for the facilities permitted under this section. Required report to be delivered beginning at the end of the first twelve months facilities are placed into operation and thereafter every year on anniversary date that the facilities are in operation. Copies of the Annual O&M Report Form are available at the Planning Board's Office.

**J. WEF - Small Wind Energy System. Requirements.**

- (1) WEF shall have a MTH no greater than seventy-five (75) feet and may exceed the MTH by Special Permit issued by the Zoning Board of Appeals upon a finding that the height of the proposed structure does not derogate from the purpose of this section as set forth in A. Purpose, above.
- (2) WEF shall be located no closer than the MTH, from the nearest non-accessory structure; provided that no setback shall be required from building or buildings which are on the same parcel and which are served by the WEF.

(3) One or more wind facilities, which shall have a total rated nameplate capacity not to exceed 10kW.

K. WEF - Building Integrated WEF (BIWF). Requirements.

- (1) No BIWF shall be erected, constructed, installed or modified without first obtaining a Special Permit from the SPGA. The construction of a BIWF shall be allowed subject to the issuance of a Special Permit and provided that the use complies with all requirements of this Section and Section E above. All such wind facilities shall, where economically feasible, be constructed and operated in a manner that minimizes any adverse visual, safety, and environmental impacts
- (2) Required Supporting Documentation for BIWF. The Special Permit application must at a minimum, include:
  - (a) Analysis and design documents, completed by a structural engineer registered to practice in the Commonwealth of Massachusetts, demonstrating that the proposed building is structurally sufficient to support the permanent installation of the proposed BIWF. At a minimum, the analysis should address vibration, wind load, and ice load.
  - (b) Elevation drawings of BIWF installed, viewed from north, south, east, and west.
  - (c) Building schematic detailing point(s) of connection and associated supports for the BIWF.
  - (d) Schematic of attachment method for connecting the BIWF to the building.
  - (e) Specification sheets for wind turbine and all related components (inverters, controllers, disconnects, etc.)
  - (f) One or three line electrical diagram detailing wind turbine, associated components, and electrical interconnection methods, with all National Electrical Code (NEC) compliant disconnect and over current devices.

L. Safety and Environmental Standards. Wind Facilities operations shall be required to adhere to all requirements of this section at all times the wind facilities are in operation unless waived by the SPGA in its written decision.

- (1) Emergency Services. The applicant shall provide a copy of the project summary, electrical schematic, and site plan to the local town emergency services, as designated by the permit granting authority, as well as the local electrical utility company. Upon request the applicant shall cooperate with local emergency services in developing an emergency response plan. All means of disconnecting the WEF shall be clearly marked and accessible.
  - (a) The applicant or facility owner shall maintain a phone number and identify a responsible person for the public to contact with inquiries and complaints throughout the life of the project.
- (2) Fire Protection System. The nacelle of a Utility-Scale WEF shall be protected by an automatic fire suppression system. Fairhaven fire officials will observe the system in place immediately prior to the erection of the nacelle to the tower.
- (3) Unauthorized Access. Wind turbines or other structures part of a WEF shall be designed to prevent unauthorized access. For instance, the tower shall be designed and installed so as to not provide step bolts or other climbing means readily accessible to the public for a minimum height of 8 feet above the ground. Electrical equipment shall be locked where possible.
- (4) Shadow/Flicker. Wind facilities shall be sited in a manner that minimizes shadowing or flicker impacts. The applicant has the burden of proving that this effect does not have significant adverse impact on neighboring or adjacent uses.
- (5) Noise. The WEF and associated equipment shall conform with the provisions of the Department of Environmental Protection's (DEP), Division of Air Quality Noise Regulations (currently 310 CMR 7.10), unless the DEP and the SPGA agree that those provisions shall not be applicable. A source of sound will be considered to be violating these regulations if the source:
  - (a) Increases the broadband sound level by more than 10 dB(A) above ambient, or

- (b) Produces a pure tone condition when an octave band center frequency sound pressure level exceeds the two adjacent center frequency sound pressure levels by 3 decibels or more. These criteria are measured both at the property line and at the nearest inhabited structure. Ambient is defined as the background A-weighted sound level that is exceeded 90% of the time measured during equipment hours. The ambient may also be established by other means with consent from DEP. An analysis prepared by a qualified engineer shall be presented to demonstrate compliance with these noise standards, if required by the permit granting authority.
  - 1. The SPGA, in consultation with the DEP shall determine whether such violations shall be measured at the property line or at the nearest inhabited residence. The WEF owner and operator shall make reasonable efforts to respond to the public's inquiries and complaints.
  - 2. Upon receipt of a complaint to the Fairhaven Board of Health (BOH) regarding sound from an existing facility, the BOH will investigate the complaint. The BOH will follow its established complaint procedure to monitor and analyze the sources of complaints. If the BOH determines the complaint to be reasonable, the owner or operator shall be required, at its expense, to have prepared, by an independent professional acoustical engineer approved by the town, an acoustical study that measures sound levels and demonstrates compliance with the sound standards in this Section.
- (c) Sound Assessment. The applicant shall provide a report estimating current ambient sound at appropriate locations and maximum projected sound from the proposed facility, measured in dB(A) (decibels A-weighted), including but not limited to the following:
  - 1. An estimation or measurement of the existing ambient background sound levels.
  - 2. Identification of a model for sound propagation (sound modeling software will include a propagation model).
  - 3. A prediction or measurement of sound levels from the facility at the nearest non-participating landowner's occupied building(s), at all participating landowner's occupied building(s), and the nearest property line. Inputs to the model must include specifications and expected sound data from the actual manufacturer and model number of the equipment proposed for the site.
  - 4. A comparison of calculated sound pressure levels from the facility with background sound pressure levels at the locations of concern.
  - 5. An estimate of the maximum total sound in the environment after the facility is operational. A listing of all inputs used in the Sound assessment, and all sound data, manufacturers data, power curves and sound curves used as inputs in the sound assessment must be provided to the board before the assessment is considered complete
- (d) Operational Noise Analysis. The applicant shall conduct with the BOH, an operational analysis of noise during the first ninety (90) days of operation. The WEF Facility shall not be allowed to operate between the hours of 7PM and 7AM, except during periods when a live attendant is present and is actively conducting a sound assessment in accordance with approved protocol. This restriction shall remain in place until the applicant has proven the system has operated in compliance for at least ninety (90) consecutive calendar days. The applicant will need to observe weather forecasts and plan to attend highest wind days in order to keep the system running through increasing wind periods. The BOH shall have access to all Power and Noise data recorded by the applicants monitoring system and shall produce reports upon written request of the BOH. The analysis will be coordinated with the BOH and shall contain sufficient information for a determination of whether the facility meets Massachusetts 310 CMR 7.10, and this bylaw, as required above.
- (e) The applicant shall provide, at their own expense, two (2) permanently mounted sound meters, with data loggers, for the purpose of recording sound levels at the property line of the two abutters forecast to be impacted the most by sound from sound emissions from the WEF. A written report explaining how the location of the meters was determined shall be submitted to the BOH for review prior to installation. This equipment shall be used to establish a baseline for sound at the location observed during commissioning / compliance testing and will allow the BOH to determine when a

significant change in sound power has been experienced at the site (for any reason, such as wear and tear, poor maintenance, change in topography from storms, etc.). Metering equipment shall be calibrated annually at the applicants' expense and no WEF shall remain in operation without an operational sound meter in place. Once the compliance testing is complete, the two data loggers shall record sound levels continuously and at intervals of 1/8 of a second per sample maximum and summary reports shall be made available on a monthly basis (or upon request) to the BOH.

- (6) Land Clearing, Soil Erosion and Habitat Impacts. Clearing of natural vegetation shall be limited to that which is necessary for the construction, operation and maintenance of the WEF and is otherwise prescribed by applicable laws, regulations, and ordinances, and subject to existing easements, restrictions and conditions of record.
- (7) Avian study and bat studies. The applicant shall submit the results of an avian and bat species analysis to the SPGA. The applicant shall continually monitor the injuries and fatalities and to assess compliance of the site with the recommendations as proposed in the studies, if any.
- (8) Facility Conditions. The applicant shall maintain the WEF in good condition. Maintenance shall include, but not be limited to, painting, structural repairs, emergency braking (stopping) and integrity of security measures. Site access shall be maintained to a level acceptable to the Fire Chief. The project owner shall be responsible for the cost of maintaining the WEF and any access road(s), unless accepted as a public way, and the cost of repairing any damage occurring as a result of operation and construction.
- (9) Modifications. All material modifications to a WEF made after issuance of the Special Permit shall require approval by the SPGA as provided in this section.
- (10) The WEF shall be equipped with controls to detect imbalance that could occur for any reason, including ice and snow build-up. These sensors shall shut down the turbine automatically in the event of snow and ice build-up and shall not allow the equipment to restart until a safe operating condition has been restored. The Town Public Safety Officials shall have access to records showing date and time of imbalance shutdown. Calibration of the sensors shall be certified every year, on or before October 1<sup>st</sup>.

M. Criteria for review and approval.

- (1) A Special Permit shall be granted under this section if the SPGA finds in writing that each WEF meets its designated tower requirements listed above, and that the design, safety and environmental standards, set forth above, have been met.
- (2) The SPGA shall also impose, in addition to any applicable conditions specified in this section, such conditions as it finds reasonably appropriate to safeguard the neighborhood or otherwise serve the purposes of this section, including, but not limited to: screening, lighting, fences, modification of the exterior appearance of the structures, limitation upon size, hours of operation, method of access or traffic features, parking, removal upon cessation of use or other requirements. Such conditions shall be imposed in writing and the applicant may be required to post bond or other surety for compliance with said conditions in an amount satisfactory to the SPGA.
- (3) The Special Permit shall lapse if substantial use or construction has not commenced within two years of the date of issuance, except for good cause shown (including but not limited to appeals of the grant of the Special Permit or litigation enjoining the construction under the permit), and provided further that such construction, once begun, shall be actively and continuously pursued to completion within a reasonable time.
- (4) The SPGA will require the applicant to pay for outside, independent professional services to evaluate the proposal's compliance with this section and to determine the flexibility of geographic location, to analyze the loading capacities of the proposed structures, and to review camouflage and screening techniques.
- (5) The final decision of the SPGA shall contain a condition when mitigation, turbine shutdown or removal would be imposed if a WEF is found to become non-compliant with this section.

**§ 198-29.6 - Solar Photovoltaic Energy Facilities (SPEF). [Added 5-4-2013 STM by Art. 8]**

- A. Purpose. The purpose of this by-law is to encourage the use of Solar Photovoltaic Energy and provide for the construction and operation of Ground-Mounted SPEF and to provide standards for the placement, design, construction, monitoring, modification and removal of Ground-Mounted SPEF that address public safety, minimize impacts on scenic, natural and historic resources of the Town and provide adequate financial assurance for decommissioning. The provisions set forth in this section shall take precedence over all other sections when considering applications related to the construction, operation, and/or repair of Ground-Mounted SPEF.
- B. Applicability. This section applies to all ground-mounted solar photovoltaic installations proposed to be constructed after the effective date of this section. This section also pertains to physical modifications that materially alter the type, configuration, or size of these installations or related equipment. Roof mounted SPEF are not governed under this section and are permitted in all districts when connected behind the meter.
- C. Compliance with Laws, Ordinances and Regulations: The construction and operation of all SPEF shall be consistent with all applicable local, state and federal requirements, including but not limited to all applicable safety, construction, electrical, and communications requirements. All buildings and fixtures forming part of a SPEF shall be constructed in accordance with the State Building Code.
- D. Special Permit Granting Authority. The Planning Board shall be the Special Permit Granting Authority (SPGA) for all SPEF as defined in this bylaw.
- E. Validity: The invalidity of any provision of this section shall not invalidate any other section or provision thereof.
- F. Application for Special Permit Review. Submittal Application for Special Permit Review shall require the filling of one copy of a site plan review application and 10 prints of the site plan drawn to an adequate scale to convey all required information. Such plan(s) shall contain the following for an application to be considered complete.
  - (1) Actual dimensions of the lot.
  - (2) All easements existing or proposed.
  - (3) Location and size of existing and proposed structures including any existing structures within 100 feet of the site.
  - (4) Name, width and condition of all abutting streets.
  - (5) Existing and proposed topography at two-foot minimum contours.
  - (6) Existing and proposed water, sanitary and storm drainage facilities.
  - (7) Landscape plan. Landscaping including sizes, types and numbers of plantings and details. Existing vegetation and other unique land features shall be preserved where feasible.
  - (8) Blueprints or drawings of the SPEF signed by a Professional Engineer licensed to practice in the Commonwealth of Massachusetts showing the proposed layout of the system and any potential shading from nearby structures
  - (9) The stamps and seal of the professional land surveyor responsible for surveying the property.
  - (10) The stamp and signature of the professional engineer responsible for drawing the plan.
  - (11) The location of all wetlands on the site and within 100 feet of the site.
  - (12) The location of the River Protection Act Riverfront Resource Protection Area.
  - (13) Proposed changes to the landscape of the site, grading, vegetation clearing and planting, exterior lighting, screening vegetation or structures;

- (14) A stormwater management plan (SMP) detailing the existing environmental and hydrological conditions of the site, proposed alterations of the site and all proposed components of the drainage system and any measures for the detention, retention, or infiltration of water, for the protection of water quality and protection from flooding. As described in § 198-31.1 Stormwater Management.
  - (15) A description of the solar photovoltaic facility and the technical, economic and other reasons for the proposed location and design shall be prepared and signed by a registered professional engineer.
  - (16) Confirmation prepared and signed by a registered professional engineer that the SPEF complies with all applicable Federal and State standards.
  - (17) One or three line electrical diagram detailing the solar photovoltaic installation, associated components, and electrical interconnection methods, with all National Electrical Code compliant disconnects and over current devices.
  - (18) Documentation of the major system components to be used, including the PV panels, mounting system, inverters.
  - (19) Documentation of the sound generated by equipment used in the production of electrical energy, including any proprietary documentation. A Sound study will be required by the SPGA to determine the impact of noise on abutting residences.
  - (20) Documentation of actual or prospective access and control of the project
  - (21) An operation and maintenance plan (see also Section 198.29.6.G.13 below)
- G. General Design Review Standards. Unless otherwise expressly provided by this section of the bylaw all requirements of the underlying zoning district shall apply and in addition the following standards shall apply.
- (1) Large-scale, ground-mounted SPEF shall:
    - (a) Be located on a parcel of land that contains a minimum of ten (10) acres when in the RR, B, I AG or WRP districts.
    - (b) Be setback 75 feet for the front, 50 for side and rear yards from abutting RA, RB, RC, RR, AG, MU, WRP and P Districts.
    - (c) Be setback 50 feet from front yard in the B and I Districts, but 10 feet from side and rear yards when abutting the B and I Districts.
  - (2) On-Site SPEF shall:
    - (a) Be sized by electrical load according to the building they serve and must be connected to the customer side, behind the electrical service metering equipment.
    - (b) Be setback, at a minimum, to the district setbacks they fall in.
    - (c) Not cast glare to abutting uses by providing screening methods.
    - (d) Not permit the equipment to create excessive noise to abutters by installing inverters as far from abutting structures as feasible.
    - (e) Provide fencing to prevent unauthorized access to arrays.
  - (3) All appurtenant structures, including but not limited to, equipment shelters, storage facilities, transformers, and substations, shall be architecturally compatible with each other and shall be screened from the view of persons not on the parcel, public rights-of-ways and all residential districts.
  - (4) Lighting of SPEF shall be consistent with state and federal law. Lighting of appurtenant structures shall be limited to that required for safety and operational purposes, and shall be reasonably shielded from abutting properties. Where feasible, lighting of the solar photovoltaic installation shall be directed downward and shall incorporate full cut-off fixtures to reduce light pollution.

- (5) Signs. There shall be no signs, except announcement signs, no trespassing signs or any signs required to warn of danger. A sign is required that identifies the owner and operator with an emergency telephone number where the owner and operator can be reached on a twenty-four hour basis.
  - (6) All utility connections from the SPEF site shall be underground except to the extent that underground utilities are not feasible in the reasonable determination of the SPGA.
  - (7) Inverters shall be sited so as to minimize sound impact to abutting residences.
  - (8) Clear cutting of trees and natural vegetation, within 5 years, shall be prohibited for the construction, operation and maintenance of the solar photovoltaic facility.
  - (9) There shall be a minimum of one parking space to be used in connection with the maintenance of the SPEF and the site; however, it shall not to be used for the permanent storage of vehicles.
  - (10) Setbacks shall provide for adequate screening of noise and glare from abutting uses and structures. Techniques such as dense natural vegetated plantings, earthen berms or increased setbacks will be required, depending upon site specific conditions. Setbacks shall not be disturbed by access roads, except where allowed by the SPGA for access to the site. Setbacks shall not be used for any purpose other than natural vegetation or other screening required by the SPGA. Setbacks from property lines shall be as provided above for type of SPEF.
  - (11) All ground-mounted SPEF shall be fenced for security. Fencing that is visible from right-of-way or residence shall be vinyl coated or another decorative type of fence acceptable to the SPGA. All fencing shall be designed to blend into the landscape.
  - (12) The project proponent shall submit a plan for the operation and maintenance of the ground-mounted SPEF, which shall include measures for maintaining safe access to the installation, storm water controls, as well as general procedures for operational maintenance of the installation.
  - (13) The SPEF owner or operator shall provide a copy of the project summary, electrical schematic, and site plan to the local fire chief. Upon request the owner or operator shall cooperate with local emergency services in developing an emergency response plan. All means of shutting down the SPEF shall be clearly marked. The owner or operator shall identify a responsible person for public inquiries throughout the life of the installation.
  - (14) No ground-mounted SPEF shall be approved or constructed until evidence has been given to the SPGA that the utility company that operates the electrical grid where the installation is to be located has been informed of the SPEF owner or operator's intent to install an interconnected customer-owned generator. Off-grid systems shall be exempt from this requirement.
  - (15) No ground-mounted SPEF shall be constructed, installed or modified as provided in this section without first obtaining a building permit
  - (16) The ground-mounted SPEF owner or operator shall maintain the facility in good condition. Maintenance shall include, but not be limited to, painting, structural repairs, and integrity of security measures. Site access shall be maintained to a level acceptable to the local Fire Chief and Emergency Medical Services. The owner or operator shall be responsible for the cost of maintaining the SPEF and any access road(s), unless accepted as a public way.
- H. Abandonment or Decommissioning: The owner, operator, his successors in interest shall remove any ground-mounted SPEF which has reached the end of its useful life or has been abandoned. The owner or operator shall physically remove the installation no more than 150 days after the date of discontinued operations. The owner or operator shall notify the Site Plan Review Authority by certified mail of the proposed date of discontinued operations and plans for removal.
- (1) Decommissioning shall consist of:
    - a) Physical removal of all ground-mounted SPEF, structures, equipment, security barriers and transmission lines from the site.

- b) Disposal of all solid and hazardous waste in accordance with local, state, and federal waste disposal regulations.
  - c) Stabilization or re-vegetation of the site as necessary to minimize erosion. The Site Plan Review Authority may allow the owner or operator to leave landscaping or designated below-grade foundations in order to minimize erosion and disruption to vegetation.
- (2) Abandonment: Absent notice of a proposed date of decommissioning or written notice of extenuating circumstances, the SPEF shall be considered abandoned when it fails to operate for more than one year without the written consent of the Site Plan Review Authority. If the owner or operator of the ground-mounted SPEF fails to remove the installation in accordance with the requirements of this section within 150 days of abandonment or the proposed date of decommissioning, the town may enter the property and physically remove the installation.
  - (3) Financial Surety: Proponents of ground-mounted SPEF shall provide a form of surety, either through escrow account, bond or otherwise, to cover the cost of removal in the event the town must remove the installation and remediate the landscape, in an amount and form determined to be reasonable by the SPGA, but in no event to exceed more than 125 percent of the cost of removal and compliance with the additional requirements set forth herein, as determined by the project proponent. Such surety will not be required for municipally- or state-owned facilities. The project proponent shall submit a fully inclusive estimate of the costs associated with removal, prepared by a qualified engineer. The amount shall include a mechanism for calculating increased removal costs due to inflation.

I. Criteria for Site Plan review and approval.

- (1) A Special Permit may be granted under this section if the SPGA finds in writing that each of the design review standards set forth above have been met and that the location of the ground-mounted SPEF is suitable and that the size and design are the minimum necessary for that purpose
- (2) The SPGA shall also impose, in addition to any applicable conditions specified in this section, such conditions as it finds reasonably appropriate to safeguard the neighborhood, public or otherwise serve the purposes of this section, including, but not limited to: screening, lighting, noise, fences, modification of the exterior appearance of the structures, limitation upon size, method of access or traffic features, parking, removal upon cessation of use or other requirements. Such conditions shall be imposed in writing and the applicant may be required to post bond or other surety for compliance with said conditions in an amount satisfactory to the SPGA.
- (3) The Special Permit shall lapse if substantial use or construction has not commenced within two years of the date of issuance, except for good cause shown (including but not limited to appeals of the grant of the site plan or litigation enjoining the construction under the permit), and provided further that such construction, once begun, shall be actively and continuously pursued to completion within a reasonable time.
- (4) The SPGA may require the proponent to provide or pay for professional services to evaluate the proposal.
- (5) Fairhaven Conservation Commission. The applicant must file a Notice of Intent if within the wetland resource areas or if within 100 feet buffer zone.

**§ 198-30 Filling. [Added 3-16-1973 ATM by Art. 74]**

Not more than 200 cubic yards of fill from off the premises shall be placed on any parcel without written authorization from the Building Commissioner, which shall be granted only upon demonstration that the requirements of § 198-28 are not being violated and that reasonable care is being taken to avoid harmful diversion of water onto adjoining properties.



**§ 198-31 Earth removal regulations. [Added 3-16-1974 ATM by Art. 90]**

**A. Applicability [Amended 5-6-1989 by Art. 6]**

- (1) The removal from a subdivision of more than 50 cubic yards of sand, gravel, rock, topsoil, sod, loam, peat, humus, clay or similar material within any 12 month period shall be allowed only on a special permit from the Zoning Board of Appeals in accordance with § 198-8.
- (2) Loam shall not be removed from any lot area of a subdivision or any other area of a subdivision, that is not outlined on the plan as a roadway until specific building permits are issued for the lots involved. The soil removal shall be under the supervision of the Building Commissioner.

**B. Permit from the Zoning Board of Appeals. Written application for a special permit must be made to the Zoning Board of Appeals for a new removal operation, or for the extension of existing ones to parcels other than those so used as of July 1, 1974. Special Permits shall expire two years from the date of issuance, unless an extension for another two years is granted by the Zoning Board of Appeals, following a public hearing. The following shall be conditions for such issuance:**

- (1) The application shall be accompanied by a plan describing the premises and the proposed operation. If involving more than two acres or 2,000 cubic yards the plan shall be prepared by a registered land surveyor and shall show property lines; names and addresses of all abutters, including those across any street or way; existing grades in the area from which the material is to be removed and in surrounding areas; grades below which no excavation shall take place; and the proposed cover vegetation and trees.
- (2) A performance bond in the amount determined by the Zoning Board of Appeals shall be posted in the name of the town assuring satisfactory performance in the fulfillment of the requirements of this chapter and such other conditions to the issuance of its permit as the Board may impose.
- (3) Before granting a permit, the Zoning Board of Appeals shall give due consideration to the location of proposed earth removal, to the general character of the neighborhood surrounding such location and to the general safety of the public ways in the vicinity.

**C. Operation standards.**

- (1) No excavation shall be less than 200 feet from an existing public way unless specifically permitted by the Zoning Board of Appeals, and no excavation shall be less than 50 feet from any other perimeter lot line. Natural vegetation shall be left and maintained on the undisturbed land for screening and noise reduction purposes, and surge piles and overburden piles shall be located for similar purposes.
- (2) All trucking routes and methods will be subject to approval by the Chief of Police.
- (3) All roads leading from the earth removal area to public ways shall be treated with oil, stone or other suitable material to reduce dust and mud for a distance of 200 feet from said public way. Roads leading from earth removal areas to public ways shall be constructed at an angle to the public way or constructed with a curve so as to help screen operation from public view.
- (4) No gravel shall be removed within six feet of spring high water table. This elevation shall be established from a test pit and the level related to a permanent monument of the property. This information shall show on the topographic plan.

**D. Restoration. Forthwith following expiration or withdrawal of a permit or upon voluntary cessation of operations all land shall be graded leaving no slopes in excess of one foot vertical to two feet horizontal, providing for surface drainage. Boulders and stumps shall be buried or disposed of and the entire area shall be covered with not less than four inches of topsoil, planted with cover vegetation, which shall have been established prior to release of the bond.**

**E. Stockpiling. Topsoil stripped and stockpiled in preparation for construction or for earth removal shall be restored to its original location within 36 months of such stripping, unless a valid building permit or earth removal permit is in force.**

### **§ 198-31.1 Stormwater management. [Added 5-1-1999 ATM by Art. 9]**

This section shall apply to all new special permits subject to Section 198-29 for additions or renovations which increase the impervious area of property applied for after January 12, 1999, as provided for in MGL c. 40A § 6. Further this section shall also apply to such special permits granted prior to January 12, 1999, as provided for in MGL c. 40A § 6, if the building permits authorized under such special permit are not issued prior to November 1, 1999. No lot created after May 1, 1999, may be built upon without compliance with this section. The requirements of this section may be met for lots created after May 1, 1999, by approval of a subdivision plan that includes a stormwater management plan as described herein, by the Fairhaven Planning Board.

#### **A. Standards.**

##### **(1) Stormwater management for each development shall accomplish the following:**

- (a) **Flooding.** The design and construction of each subdivision or special permit project shall be done in a manner such that post-development runoff will not exacerbate or create flooding conditions, or alter surface water flow paths, resulting in impacts to adjacent properties to the site during the two-, ten-, twenty-five- and one-hundred-year twenty-four-hour storm events.
  - [1] No increase will be allowed in the peak rate of runoff off of the site for any of the above design storms.
  - [2] No increase will be allowed in the volume of runoff off of the site up to the ten-year, twenty-four-hour design storm.
- (b) **Water quality.** The first flush of stormwater runoff shall be treated prior to discharge off of the site. The treatment system(s) shall be designed to accommodate the first flush from the entire development site.
  - [1] Treatment shall be provided to achieve a minimum 80% removal of total suspended solids (TSS) from the first flush.
  - [2] Any development in Nasketucket River Basin Zoning Overlay District shall incorporate physical treatment processes to remove nitrogen at an efficiency rate of 30% or greater and remove phosphorous at a design rate of 50% or greater.
- (c) Reproduce, as nearly as possible, the hydrologic conditions in the ground and surface waters prior to the development.
- (d) Reduce stormwater pollution to the maximum extent possible using best management practices (BMPs).
- (e) Have a long-term maintenance plan.
- (f) The Planning Board is authorized to vary from these standards due to topographic features of the lot.

#### **B Submittal requirements.**

- (1) It shall be the responsibility of the applicant for all subdivisions greater than three lots and for all special permits for new construction, and for special permits for additions or renovations which increase the impervious area of a property requiring approval of the Planning Board to submit 10 copies of a stormwater management plan (SMP) detailing the existing environmental and hydrological conditions of the site, proposed alterations of the site, and all proposed components of the drainage system and any measures for the detention, retention, or infiltration of water, for the protection of water quality and protection from flooding. The SMP shall contain sufficient information for the Planning Board to evaluate the effectiveness and acceptability of those measures proposed by the applicant for controlling flooding and pollution from stormwater runoff. The SMP shall contain maps, charts, graphs, tables, photographs, narrative descriptions, calculations, plans showing construction details of all systems and structures, and citations to supporting references, as appropriate, to communicate the information as required by this section.
- (2) The submittal of a stormwater management plan shall include an order of conditions or a determination of nonapplicability from the Fairhaven Conservation Commission issued under the Fairhaven Wetlands Bylaw.
  - (a) Site characteristic information to be included in the stormwater management plan (SMP).

- [1] Pre-development conditions shall include:
  - [a] The existing watersheds on the property, as well as upgradient areas contributing runoff to the property;
  - [b] Location of all surface waters and wetlands on the site or on lots adjacent to the site;
  - [c] The delineation of the one-hundred-year flood elevation as indicated on the Federal Emergency Management Act (FEMA) maps. If FEMA maps do not exist or if the waterbody or watercourse one-hundred-year flood elevation is not indicated on the map, the elevation shall be calculated utilizing an appropriate methodology such as NRCS TR-55 or TR-20 or HEC2. [Note: The floodplain location determined by the FEMA maps are approximate. When a specific elevation is given, the location of the floodplain shall correspond to that elevation.];
  - [d] The principal vegetation types sufficient to determine an appropriate curve number;
  - [e] The topography described at one-foot intervals; areas of steep slopes over 15% shall be highlighted;
  - [f] The soil types on the site and the hydrological soil groups based the most current Natural Resource Conservation Service soils map of the site (available at the NRCS office in Wareham);
  - [g] The location of any public or private water supplies within 150 feet of the property as well as on the property;
  - [h] Soil logs signed by a DEP Certified Soil Evaluator for each proposed stormwater control system site (Documentation should be for a minimum of four feet below the bottom of the stormwater system and be submitted for both flood control stormwater systems and pollution reduction stormwater systems).
  - [i] Maximum groundwater levels as observed in the soil at the proposed stormwater control system locations;
  - [j] The flow path(s), design points for each watershed; and
  - [k] Areas of ponding or swamping.
- [2] Postdevelopment conditions shall include:
  - [a] Changes in topography at one-foot intervals;
  - [b] Areas where vegetation will be cleared or otherwise altered (For residential development assume 90% of all area excepting buildings to be managed turf.);
  - [c] The proposed watersheds on the property, as well as upgradient areas contributing runoff to the property;
  - [d] The proposed development layout including: locations of roadways, common parking areas, and undisturbed lands; and locations of drainage systems and stormwater treatment facilities;
  - [e] Areas to be utilized in overland flow, i.e. grass swales and filter strips, showing: proposed vegetation; the soil susceptibility to erosion (using the NRCS classification);
  - [f] The flow path(s) for two-, ten-, twenty-five- and one-hundred-year twenty-four-hour storm event; and
  - [g] Design points for each watershed.
- (b) Water quantity/duration/quality information to be submitted in the SMP.
  - [1] Predevelopment conditions in narrative form or calculations shall include: peak discharge rate, based on the two-, ten-, twenty-five- and one-hundred-year twenty-four-hour storm event using NRCS TR-55 or TR-20; and volume of the surface runoff for ten-year twenty-four-hour storm event using NRCS TR-55 or TR-20.

- [2] Post development conditions in narrative form or calculations shall include: peak discharge rate, based on the two-, ten-, twenty-five- and one-hundred-year twenty-four-hour storm event using NRCS TR-55 or TR-20; volume of the surface runoff for the ten-year twenty-four-hour storm event using NRCS TR-55 or TR-20; design point(s) for each watershed; detention/retention time, discharge rate, and approximate time of concentration through the BMP for the water quality storm; a description of and calculations for the proposed outlet structure(s); both the principle outlet and emergency spillway; and a discussion regarding whether the proposed stormwater system meet or exceed the established performance standards as well as an evaluation of the pollutant removal efficiency of each proposed treatment facility or group of facilities:
- C. Design standards. The design, construction, and maintenance of the stormwater system, and the submittal of information to evaluate the system, shall be consistent with the standards and specifications set out below.
- (1) Performance standards and design specifications.
    - (a) Control of stormwater runoff shall meet the design criteria for both flood (volume and peak discharge) control and nonpoint source pollution reduction as indicated in Subsection A above. All assumptions, methodologies, and procedures used to design stormwater systems shall accompany the design.
    - (b) Stormwater design methodology considerations for stormwater management.
      - [1] Runoff calculations for flood control shall be provided utilizing the rational formula, the NRCS TR-20 or TR-55, as appropriate for the site. The appropriate methodology shall be determined from the restrictions on each method described in Basic Hydrological Calculations for Conservation Commissioners Runoff, Land Subject to Flooding, and Flow in Pipes and Channels, (1987). The Rational Method cannot be used to determine volume.
      - [2] The appropriate pre- and post-development worksheets as shown in Basic Hydrological Calculations for Conservation Commissioners Runoff, Land Subject to Flooding, and Flow in Pipes and Channels, (1987), shall be submitted with the subdivision plan or special permit application.
      - [3] The flow length for pre-development sheet flow to determine the time of concentration (Tc) or travel time (Tt) shall not exceed 50 feet.
      - [4] Design points.
        - [a] The design points shall be at the:
          - [i] Edge of wetlands;
          - [ii] Property line; or
          - [iii] Existing storm drain system.
        - [b] For each pre-development design point there shall be a corresponding postdevelopment design point.
  - (2) General standards and specifications. The design, construction, and maintenance of stormwater systems shall be consistent with the following:
    - (a) Discharging runoff without treatment directly into rivers, streams, watercourses, or wetlands is prohibited.
    - (b) Natural watercourses shall not be dredged, cleared of vegetation, deepened, widened, straightened, stabilized, or otherwise altered.
    - (c) Land outside the parcel subject to development review shall not be used in the stormwater management plan (i.e., the location of the detention pond) unless a recordable easement has been granted for such use and a copy of the easement has been submitted to the Planning Board as part of the SMP.
    - (d) The site shall be graded so that surface water shall be directed into the stormwater management system.
    - (e) Intermittent watercourses such as swales shall be vegetated.

- (f) Prior to discharging any stormwater runoff into a stormwater system, the following conditions must also be met:
  - [1] The system shall be installed according to applicable standards and specifications of this section;
  - [2] All components of the system shall be stabilized; and
  - [3] All upland areas contributing stormwater runoff to the system shall be stabilized (nonerosive).
- (g) All basins/ponds designed for stormwater runoff control shall:
  - [1] Be designed in accordance with current NRCS standards and specifications unless otherwise indicated in Subsection C(4), Specific standards and specifications below;
  - [2] Have a two-stage design when pollution reduction and flood control are incorporated into one stormwater management system. The upper stage shall provide enough storage to control the post development peak discharge rates for the two-, ten-, twenty-five- and one-hundred-year twenty-four-hour storm events to the pre-development levels, the lower stage shall provide enough storage to meet the pollution removal efficiencies as described Subsection C(4), Specific standards and specifications below;
  - [3] Have energy dissipaters at the outlets of all inflow and outflow pipes;
  - [4] Have outflow pipes designed to minimize clogging (i.e. through the use of trash racks);
  - [5] Have an emergency spillway to allow for the passage of water without damage to the water quality structure for storms greater than their largest design capacity;
  - [6] Have side slopes at a no steeper than a four horizontal to one vertical grade unless otherwise called for by the Fairhaven Conservation Commission to minimize a stormwater system's impact on wetland or bordering wetland resource areas [Side slopes must be stabilized and planted with vegetation to prevent erosion. A ten-foot wide bench at 0% slope shall surround any permanent pool.]; and
  - [7] Except for the sediment forebay, shall have no permanent pool depth in excess of 2½ feet.
- (h) All water quality stormwater systems shall be designed in accordance with the runoff volume indicated in Subsection A above. Runoff greater than this design criteria shall be controlled using the peak discharge/volume control criteria in Subsection A above.
- (j) Infiltration Basins using redundant sediment removal techniques (i.e. sediment forebay, grassed swale and filter fabric) may be designed and utilized to act as stormwater systems for both water quality and volume control, provided all other standards and specifications are met.
- (k) Volume control structures shall not be placed upgradient of any pollution stormwater system.
  - [1] Volume control shall be by infiltration;
  - [2] Infiltration areas designed and constructed to control the volume of runoff shall be located in areas with a NRCS hydrological soil group of A, B, or C;
  - [3] Infiltration for volume control shall be designed and constructed with the bottom of the infiltration area at or above the maximum high ground water elevation; and
  - [4] The calculations to determine the size of the volume control structure shall assume the surface of the structure to be impervious;
- (k) Forebays.
  - [1] All water quality basin/ponds shall have a sediment forebay. These forebays shall:
    - [a] Consist of a separate cell;
    - [b] Be sized to contain 0.25 inches per impervious acre of contributing drainage;
    - [c] Be less than twelve-foot distance from the bank to the center of the forebay;

- [d] Be four feet deep; and
  - [e] Have nonerosive exit velocities for the two-year design storm.
- [2] If the water quality basin is to be deeded to the town, the forebay shall be constructed to meet Board of Public Works requirements.
- [3] The forebays may have a headwall depending on the Board of Public Works recommendations.
- (l) Where stormwater basins are designed with a permanent pool depth, a post and rail fence with pressure treated or locust posts, with a backing of plastic coated wire fencing shall be used when the basin is in close proximity to residential units, and shall further inhibit access by a planting of thick shrubs such as rugosa rose (*Rosa rugosa*) surrounding the basin.
- (m) All water quality stormwater systems shall be designed to accept a return storm of 0.5 inches off the impervious area 11 days after the water quality storm.
- (n) Conveyance of stormwater:
- [1] The entire drainage system of storm drainage lines shall be capable of conveying the twenty-five-year storm, including catch basins, manholes and culverts.
  - [2] Water velocities in pipes and gutters shall be between two and 10 feet per second. Water velocities in non-paved areas (e.g. swales, ditches) shall not be more than published values for maximum permissible velocities based on surface cover type and soil types.
  - [3] Water velocities in catch basins shall not exceed 0.5 feet per second. Catch basins shall be designed (inlet capacity and spacing) such that the flow in the gutter during a twenty-five-year design storm is not more than three feet in width as calculated utilizing methodologies described in "Drainage of Highway Pavements, Hydraulic Engineering Circular No. 12" as published by the United States Department of Transportation, Federal Highway Administration. In any event, water shall not be allowed to run for more than 300 feet on paved surfaces.
  - [4] Catch basins shall be constructed of at least six inch precast reinforced concrete. Catch basin grates shall be in the gutter to facilitate snow removal.
  - [5] The standard depth of catch basins shall be a minimum 2.5 feet below the invert of the outlet. Manholes shall be constructed at each junction point of storm drain lines. Catch basins shall not serve as manholes.
  - [6] Storm drains shall be of at least 12 inches diameter inside, with at least 24 inches of cover, and shall be of reinforced concrete Class IV pipe if having less than 48 inches of cover within a street right of way. Aluminum pipe of at least comparable strength may be substituted in appropriate locations if approved by the Fairhaven Board of Public Works (BPW). All drain pipes except subdrains shall be reinforced concrete or ADS. Waivers from these standards shall be allowed upon recommendation of the Board of Public Works.
  - [7] Easements and provisions for vehicular access shall be provided along the entire length of storm drain lines.
- (o) Cross culverts.
- [1] Culverts and stormwater outlet structures shall have reinforced concrete headwalls designed in accordance with good practice.
  - [2] At cross culverts (where a roadway bisects a stream or manmade watercourse), drainage easements shall be established upgradient of the culvert and delineated on the definitive plan based on the projected one hundred-year headwater elevation.
- (3) Selecting a water quality BMP. Three designs for water quality BMPs, micropool extended detention basins, wet extended detention ponds, and infiltration basins are listed in Subsection C(4), Specific standards and specifications below. One of these BMPs may be appropriate for the site:

- (a) Micropool extended detention basins (EDB) with a forty-eight hour detention time will not adequately remove bacteria. No EDB proposed within 1,000 feet of a sensitive receptor for bacteria shall be approved. In Fairhaven, these areas are:
    - [1] All coastal waters excluding inner New Bedford Harbor.
    - [2] Zone 2 of public water supply wells at Mill Pond pumping station.
  - (b) Due to the high failure rate of conventional infiltration practices (including porous pavement), they are not an accepted method of stormwater management unless redundant pretreatment for sediment removal is utilized. No underground infiltration practices, such as leaching catch basins, shall be allowed.
  - (c) Oil/grit separators are not needed for the type of pollutants associated with subdivisions. They shall not be approved for residential subdivisions. Oil/grit separators may be required for special permits granted by the Planning Board.
  - (d) Other water quality BMPs may be approved, provided the pollutant removal rate meets or exceeds the requirements of Section 1 above.
- (4) Specific standards and specifications for water quality BMP's.
- (a) Micropool extended detention basin (EDB). In order to provide an estimated removal efficiency of 80% for suspended solids, 30% total phosphorus, and 15% total nitrogen, EDBs shall be designed in accordance with Subsection C(1), Performance standards and design specifications, plus the specific criteria stated below. The design of EDBs shall include:
    - [1] Minimum contributing watershed area of 10 acres;
    - [2] A minimum of forty-eight-hour detention time for the water quality storm;
    - [3] A sediment forebay at the inlet;
    - [4] A micropool located near the outlet structure to reduce resuspension of sediments;
    - [5] A minimum of 3:1 length to width ratio with the inlet structure placed a maximum distance from the outlet structure; and
    - [6] The establishment of, and the methodology with which to maintain, wetland vegetation on the bottom of the basin.
  - (b) Wet extended detention ponds/basins (WP). The minimum design criteria below plus Subsection C(1), Performance standards and design specifications, will provide an estimated removal efficiency of 80% for suspended solids, 65% total phosphorus, and 40% total nitrogen. The design of WPs shall include:
    - [1] A minimum contributing watershed of 25 acres, or measures to maintain a permanent pool of water;
    - [2] A permanent pool volume within the permanent pool equal to 40% of the water quality (first flush) volume;
    - [3] A sediment forebay volume of 13 % of the water quality (first flush) volume;
    - [4] An extended detention storage volume of 47% of the water quality (first flush) volume;
    - [5] A detention time for the water quality (first flush) volume of 48 hours;
    - [6] A maximum depth of 2.5 feet;
    - [7] A marsh component to be established along the pond edges;
    - [8] A minimum of 3:1 length to width ratio with the inlet structure placed at a maximum distance from the outlet structure.
  - (c) Infiltration basin (IB). A design based on both the minimum design criteria for IBs listed below and the design criteria in Subsection C(1), Performance standards and design specifications, will provide an estimated removal efficiency of 80% for suspended solids and 90% for bacteria. The design of IBs shall include:

- [1] Three redundant pretreatment mechanisms (such as a sediment forebay or detention pond) adequate to remove and store 80% of the TSS.
- [2] Adequate volume to infiltrate the first flush of runoff.
- [3] Compliance with the specifications found in the State of Rhode Island Stormwater Design & Installation Manual, Sept. 1993, when not specified elsewhere in this Section;
  - [a] Section 6.3(a), (b)(1)(2)(4), Site Suitability, utilizing the Bristol County Soil Survey, or more recent unpublished updates available at the NRCS office in Wareham,
  - [b] Section 6.4 Infiltration Rates.
  - [c] Section 6.6 (a through i) Design Requirements.
  - [d] Section 6.7 (a)(1-11) Separation Distances.

D. Inspection and maintenance.

- (1) After the stormwater management system has been constructed and before the performance guarantee for the development has been released, the applicant shall submit an "as-built" plan detailing the actual stormwater management system as installed. The consulting engineer for the town shall inspect the system to confirm its as-built features. This engineer shall also evaluate the effectiveness of the system in an actual storm. If the system is found to be inadequate by virtue of physical evidence of operational failure, even though it was built as called for in the definitive plan, it shall be corrected before the performance guarantee is released. Examples of inadequacy shall be considered but not limited to: errors in the infiltrative capability, errors in the maximum groundwater elevation, failure to properly define or construct flow paths, or erosive discharges from basins. The cost of having the town's consulting engineer review and evaluate the as-built plans and the stormwater management system shall be borne by the developer.
- (2) All stormwater management systems shall be maintained in accordance with the following regulations.
  - (a) The applicant shall submit ten copies of a maintenance plan for stormwater management. Maintenance plans for each basin including: a maintenance schedule, an outline of responsible parties and owners, all pertinent agreements to be executed to insure proper maintenance and an estimate of future yearly maintenance costs.
  - (b) To facilitate maintenance each water quality basin/pond shall be constructed with:
    - [1] Direct maintenance access by heavy equipment to the forebay;
    - [2] A hardened bottom in the forebay made of stone or concrete to make sediment removal easier; and
    - [3] A fixed sediment depth marker installed in the forebay to measure sediment deposition over time.
  - (c) Routine maintenance and inspections shall conform to the following:
    - [1] Stormwater management systems shall be inspected annually and cleared of debris, sediment and vegetation when they affect the functioning and/or design capacity of the facility;
    - [2] Where lack of maintenance is causing or contributing to a water quality problem, immediate action shall be taken by the property owner to correct the problem within 14 days of written notice by the Planning Board;
    - [3] All actions required to maintain the stormwater management system for the purpose it was designed and constructed must be performed within 30 days following the maintenance inspection;
    - [4] Accumulated sediment shall be excavated as needed or at the request of Planning Board; and
    - [5] Any vegetation uprooted by sediment removal shall be replaced.
  - (d) To ensure future maintenance and avoid undue costs to the town:
    - [1] Each basin design shall have a design life of 20 years, as documented in a peer review publication, third party testing, or other independent means.



- [2] The applicant shall provide cost estimates per year for future maintenance of the stormwater conveyance and detention/infiltration system. This cost estimate shall include semiannual sediment removal from all catch basins and street sweeping, and cleaning of sediment forebays and detention ponds when necessary. The Board of Public Works shall be required to approve all cost estimates prior to Planning Board approval.
- [3] The applicant shall provide to the Planning Board assurances that there is in place a mechanism such as a bond, letter of credit, escrow account or similar security to ensure that the maintenance, inspection and repair of the stormwater system for a period of at least 20 years.

### **§ 198-32 Commercial camping. [Added 1-22-1977 STM by Art. 6]**

- A. Commercial camping is allowed only on Special Permit from the Zoning Board of Appeals as provided in the Use Regulation Schedule, § 198-16, and following approval by the Board of Health, and shall conform to the following minimum requirements:
  - (1) Parcel minimum area shall be 10 acres, but not less than 2,500 square feet per rental plot.
  - (2) Campers shall not be placed within 200 feet of a street line or within 80 feet of any other lot line unless dense natural vegetation or topography provide effective screening, in which case a reduction to as little as half the above may be allowed.
- B. Accessory services. Including retailing and laundry services, may be authorized by special permit, provided that such services do not together total more than 50 square feet per campsite, and are located and oriented to principally serve occupants of the camping area.

### **§ 198-32.1 Accessory dwelling units [Added 5-2-1998 STM by Art. 28]**

Purpose. For the purpose of promoting the development of affordable rental housing in dwelling conversions may be allowed by special permit of the Planning Board subject to the standards and conditions listed below:

- A. Dwelling conversions shall not be allowed unless the lot meets the minimum lot size in § 198-18 or 22,500 square feet, whichever is greater.
- B. Units created through dwelling conversions shall not be less than 1,000 square feet not including areas of the basement, attic or garage.
- C. The applicant shall illustrate to the Planning Board that the requirements of the state Building Code are met.
- D. Site requirements.
  - (1) No expansion to the existing structure.
  - (2) Parking shall be as provided for in § 198-27B(1).
  - (3) No portion of the basement, attic or garage may be used for dwelling purposes.
  - (4) Use of an existing on-site septic system to service proposed units shall be permitted only upon approval of the Board of Health.

### **§ 198-32.2 – Dock and Piers [Added 5-7-2005 ATM by Art. 20, amended 5-6-2006 ATM by Art. 9]**

- A. Purpose: The purpose of this section is to protect the general public interest in, and access to, the public tidelands of the Commonwealth by creating a review process and standards for the construction of docks and piers.

- B. Applicability: Any application to construction a dock and/or pier shall comply with this section. The Zoning Board of Appeals shall be the Special Permit Granting Authority (SPGA) in the Rural Residence Districts (RR), Single Residence Districts (RA), General Residence (RB) and Agricultural (AG) Districts. The Planning Board shall be the SPGA in the Apartment/Multi-Family (RC), Park (P), Wetland Resource Protection District (WRP), Business (B), Mixed Use (MU) and Industrial Districts (I).
- C. Requirements:
- (1) It shall be demonstrated that the placement of a dock and/or pier will not have an adverse impact on coastal ecology, recreational use of adjoining waters, or the use and enjoyment of the waterfront by adjoining property owners.
  - (2) All proposed dock and/or piers shall be designed and stamped by a Registered Engineer.
  - (3) Dock and/or pier length:
    - (a) The maximum length of any dock and/or pier including floats outside of the U.S. Army Corps of Engineers hurricane barrier shall be seventy-five (75) feet as measured from mean high water (MHW) mark seaward.
    - (b) The maximum length of any dock and/or pier including floats inside of the U.S. Army Corps of Engineers hurricane barrier shall be the minimum length necessary to have a minimum of two and one half feet of water at Mean Low Water (MLW) at the end of the dock and/or pier; however, the length shall not exceed one-hundred fifty (150) feet, which ever is less.
  - (4) No dock, pier, stairs or ramp shall exceed six (6) feet in width, measured outside the support structure (piling, posts or railing).
  - (5) Set back for any dock and/or pier, and associated floats shall be twenty-five (25) feet to side property lines as measured along the shoreline.
  - (6) Access - Lateral pedestrian passage shall be provided in the intertidal zone or along the shore for fishing and fowling purposes.
  - (7) Floating docks are permitted. The total area of any and all floats associated with a dock and/or pier shall not exceed three hundred (300) square feet.
  - (8) Two boats or vessels not over 30-feet in overall length shall be the maximum number permitted on any dock and/or pier.
  - (9) Depth of water - At MLW, there shall be minimum of two and one half feet of water or sufficient navigable water for the proposed vessel at the end of the dock, pier and/or float system.
  - (10) Shellfish on site of any proposed dock and/or pier shall be removed, replanted or replaced under supervision of the Shellfish Warden.
  - (11) Conservation Commission approvals shall be required for the construction of all docks and/or piers
  - (12) A Building Permit shall be required for the construction of a dock and/or pier.
  - (13) All necessary Federal and State permits shall be obtained prior to issuance of a building permit.
- D. Waiver of Compliance: The SPGA having jurisdiction may, in special and appropriate cases, grant a waiver to the above requirements when in their judgment such action is in the public interest and not inconsistent with the purpose and intent of the zoning bylaw.

## ARTICLE IV

### Definitions

#### § 198-33 Definitions and word use.

- A. Words used in the present tense include the future, and the plural includes the singular; word "lot" includes the word "plot"; the word "building" includes the word "structure"; the word "shall" is intended to be mandatory; "occupied" or "used" shall be considered as though followed by the words "or intended, arranged or designed to be used or occupied." The word "person" includes a corporation as well as an individual.
- B. In this chapter the following terms, unless a contrary meaning is required by the context or is specifically prescribed, shall have the following meaning:

**ABANDONMENT** - Absent notice of a proposed date of decommissioning, the facility shall be considered abandoned when the facility fails to operate for more than one year without the written consent of the special permit granting authority. [Added 5-4-2013 ATM by Art. 19]

**ABANDONED SIGN** - Any sign and/or its supporting sign structure which remains without a message or whose display surface remains blank for a period of two years or more, or any sign which pertains to a time, event or purpose which no longer applies, shall be deemed to have been abandoned. Permanent signs applicable to a business temporarily suspended because of a change in ownership or management of such business shall not be deemed abandoned unless the property remains vacant for a period of two years or more. Any sign remaining after demolition of a principal structure shall be deemed to be abandoned. Signs which are present because of being legally established nonconforming signs or signs which have required a conditional use permit or a variance shall also be subject to the definition of abandoned sign. [Added 5-2-1998 STM by Art. 29]

**ACCESSORY BUILDING** - A subordinate building, the use of which is customarily incidental to that of the principal building or of the land and which is located on the same lot with the principal buildings of use

**ACCESSORY USE** - A use customarily incidental to that of the principal building or use of land and located on the same lot as such principal building or use.

**ALTERATIONS** - As applied to a building or structure, a change or re-arrangement in the structural parts or in the exit facilities or an enlargement whether by extending on a side or by increasing in height, or the moving from one location or position to another.

**AMBIENT SOUND LEVEL**: the background A-weighted sound level that is exceeded 90% of the time. [Added 5-4-2013 ATM by Art. 19]

**ANIMAL KENNEL OR HOSPITAL** - A structure used for the harboring and/or care of more than three dogs that are more than six months old, whether commercially or not.

**ASSISTED LIVING RESIDENCE** - A residential development subject to certification under MG L. c. 19D, which provides room and board; provides assistance with activities of daily living for three or more adult residents who are not related by consanguinity or affinity (i.e. by blood or marriage) to their care provider; and collects payments or third party reimbursement from or on behalf of residents to pay for the provision of assistance. Dwelling units in assisted living residences shall not be considered multi-family or garden apartment units. [Added 5-2-1998 ATM by Art. 19]

**A-WEIGHTED SOUND LEVEL - dB(A)** - A measurement of sound pressure level, which has been filtered or weighted to progressively de-emphasize the importance of frequency components below 1,000 Hz and above 5,000 Hz. This range corresponds to the human speech band and reflects that human hearing is more sensitive to the mid-range frequencies within this range than the frequencies below and above this range. [Added 5-4-2013 ATM by Art. 19]

AWNING - A roof-like cover, often of fabric, plastic, metal or glass, designed and intended for protection from the weather or as a decorative embellishment, and which projects from a wall or roof of a structure over a window, walk, door, or the like.<sup>11</sup> **[Added 5-2-1998 STM by Art. 29]**

AWNING SIGN - A building sign or graphic printed on or in some fashion attached directly to the awning material. **[Added 5-2-1998 STM by Art. 29]**

BALLOON SIGN - A temporary sign consisting of a bag made of lightweight material supported by helium, hot or pressurized air which is greater than 24 inches in diameter. **[Added 5-2-1998 STM by Art. 29]**

BANNER - Any temporary sign, painted, printed or otherwise displayed on cloth, plastic film or similar material other than a canopy. . **[Added 5-2-1998 STM by Art. 29]**

BEAUTY PARLOR - Includes hairstyling, facials, manicures nail sculpting and similar personal grooming services. **[Added 12-10-1992 STM by Art. 1]**

BED-AND-BREAKFAST HOME - A private, owner occupied house where three or fewer rooms are let, an individual's stay is not more than three consecutive nights and a breakfast is included in the rent. **[Added 5-4-1991 ATM by Art. 26]**

BEDROOM - Any inhabitable room in a dwelling, other than a living room, dining room, kitchen, utility room, or bathroom, if such room exceeds 60 square feet. Any dwelling unit in which no such room exists shall be construed to contain one "bedroom".<sup>12</sup> **[Added 3-15-1973 ATM by Art. 78]**

BMP's - Best management practices are structural, non-structural and managerial techniques that are recognized to be the most effective and practical means to prevent and/or reduce nonpoint source pollution. **[Added 5-1-99 ATM by Art. 9]**

BOAT - Any vessel or motor craft moved by oars, paddles, sails or other power mechanism inboard or outboard, or any other vessel or structure floating upon the water whether or not capable of self-locomotion. **[Added 5-9-1989 ATM by Art. 19]**

BOATYARD - Premises for construction, major repair, servicing or onshore storage of boats. **[Added 3-18-1967 STM by Art. 65]**

BODY ART ESTABLISHMENT: **[Added 5-5-2001 ATM by Art. 11]**

- (1) A specified place or premises that has been granted a permit by the Board of Health, whether public or private, where practices of body art are performed, whether or not for profit.
- (2) "Body Art" means the practice of physical body adornment by permitted establishments and practitioners using, but not limited to, the following techniques; body piercing, tattooing, cosmetic tattooing, branding and scarification. This definition does not include practices that are considered medical procedures by the Board of Registration in Medicine, such as implants under the skin, which procedures are prohibited.

BUILDING - Any structure, whether portable or fixed, having a roof supported by columns or walls and intended for the shelter, housing, or enclosure of any individual, animal, process, equipment, goods, or materials of any kind, including, but not be limited to, principal buildings, garages, sheds, porches, decks, stairways, chimneys, bulkheads, mobile homes, trailers, storage containers and any other item designed or used for similar purposes. **[Amended 12-10-1992 STM by Art. 1; Amended 2-11-2004 STM by Art. 14]**

BUILDING COVERAGE - The percentage of the horizontal area of a lot measured from the exterior surface of the exterior walls of the ground floor of all buildings and proposed principal and accessory buildings. **[Amended 2-11-2004 STM by Art. 14]**

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<sup>11</sup> Editor's note: This definition also includes drawings, which help illustrate its provisions. Said drawings are found in Appendix B at the end of this chapter.

<sup>12</sup> Editor's note: The former definition of "boardinghouse," which immediately followed this definition, was deleted 4-16-1975 ATM by Art. 57.

**BUILDING HEIGHT** - The vertical distance from the average finished grade or the adjacent ground to the top of the highest point of the roof, parapet, chimney, antenna or other attached structure. Chimneys, antenna and other normally incidental like structures to a single- or two-family dwelling shall be exempt from the above requirement. **[Added 12-10-1992 STM by Art. 1]**

**BUILDING MARKER** - Memorial signs or tablets, names of buildings and date of erection. **[Added 5-2-1998 STM by Art. 29]**

**BUILDING SIGN** - Any sign attached or supported by any structure used or intended for supporting or sheltering any use or occupancy. **[Added 5-2-1998 STM by Art. 29]**

**BULK STORAGE** - Exposed outside storage of sand, lumber, coal, or other bulk materials, and bulk storage of liquids in tanks, except underground, as an accessory use.

**BUSINESS OFFICES** - Facility for the transaction of business exclusive of the receipt, retail sale or processing of merchandise.

**CAMPER** - A portable dwelling eligible to be registered and insured for highway use, designed to be used for travel, recreation and vacation uses, but not for permanent residence; includes equipment commonly called travel trailers, pickup coaches or campers, motorized campers and tent trailers, but not mobile homes. **[Added 3-22-1969 ATM by Art 56]**

**CAMPING, COMMERCIAL** - Premises used for camping, tenting or temporary overnight facilities of any kind where a fee is charged.

**CAMPING, SUPERVISED** - Facilities operated on a seasonal basis for a continuing supervised recreational, health educational, religious, and/or athletic program, with persons enrolled for periods of not less than one week.

**CANOPY** - A roof-like cover, often of fabric, plastic, metal, or glass on a support, which provides shelter over a doorway.<sup>13</sup> **[Added 5-2-1998 STM by Art. 29]**

**CANOPY SIGN** - Any sign that is part of or attached to a canopy, made of fabric, plastic or structural protective cover over a door or entrance. A canopy sign is not a marquee and is different from service area canopy signs. **[Added 5-2-1998 STM by Art. 29]**

**CLUB** - Premises or building of a non-profit organization exclusively servicing members and their guests for recreational, athletic or civic purposes, but not including any vending stands, merchandising or commercial activities except as required generally for the golf clubs or sportsman's clubs as elsewhere defined, or "clubs" or organizations whose chief activity is a service customarily carried on as a business.

**CONSTRUCTION SIGN** - A temporary sign erected on the premises on which construction is taking place, during the period of such construction, indicating the names of the architects, engineers, landscape architects, contractors or similar artisans, and/or the owners, financial supporters, sponsors, and similar individuals or firms having a role or interest with respect to the structure or project. **[Added 5-2-1998 STM by Art. 29]**

**CONTIGUOUS UPLAND AREA** - Contiguous land other than land classified under the Wetlands Protection Act as freshwater wetland, coastal wetland, beach, flat, marsh, or swamp and land under any water bodies such as ocean, creek, river, stream, brook, pond or lake. **[Added 11-6-1997 STM by Art. 19]**

**CONTRACTOR'S YARD** - Premises used by a building contractor or subcontractor for storage of equipment and supplies, fabrication of sub-assemblies and parking of wheeled equipment.

**CREMATIONS** - The technical heating process that reduces human remains to bone fragments. **[Added 5-6-1998 ATM by Art. 17]**

**CREMATORIUM** - A building within which cremation occurs. **[Added 5-6-1998 ATM by Art. 17]**

**DECIBEL (dB)** - The measurement of a sound pressure relative to the logarithmic conversion of the sound pressure reference level – often set as 0 dB(A). In general, this means the quietest sound humans can hear is near 0 dB(A) and the loudest humans can hear without pain is near 120 dB(A). **[Added 5-4-2013 ATM by Art. 19]**

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<sup>13</sup> Editor's note: This definition also includes drawings, which help illustrate its provisions. Said drawings are found in Appendix B at the end of this chapter.

DOCK or PIER, PRIVATE - Any structure, floating or fixed, attached or adjacent to land, and placed in or and extending into coastal inland waters (in the case of tidal waters, seaward of the mean high tide line) which is restricted to waterfront owners for their private use and is designed, or is suitable for access to vessels, for swimming or any other similar purpose. **[Added 5-9-1998 ATM by Art. 19; Amended 5-7-2005 ATM by Art. 20]**

DWELLING - A building designed or used exclusively as the living quarters for one or more families.

DWELLING CONVERSION - Alteration of a single family dwelling existing prior to January 1, 1940, to accommodate more families than the number for which it was used or designed at the adoption of this provision in any event not to exceed the provisions of § 198-32.1. **[Amended 5-2-1998 STM by Art. 28]**

DWELLING, MULTIFAMILY - A structure occupied by three or more families living independently of each other.

DWELLING, SEMIDETACHED - Two single-family dwellings units separated by a fire resisting division wall or portion with no openings, constructed with non-combustible finish on both faces and with a solid fill of non-combustible material between the structural members of the wall or partition.

DWELLING, SINGLE-FAMILY - A building occupied by a single family and having no parting walls, or walls in common with an adjacent structure.

DWELLING, TWO-FAMILY - A detached building designed for two families.

DWELLING UNIT - Quarters for a single family.

EARTH REMOVAL - Extraction of sand, gravel, topsoil, or other earth for sale or for use at a site removed from the place of extraction, exclusive of the grading of a lot preparatory to the construction of a building for which a building permit has been issued or grading of streets in accordance with an approved definitive plan.

ELEVATION - The view of the side, front, or rear of a given structure. **[Added 5-2-1998 STM by Art. 29]**

ERECT - To build, construct, reconstruct, move upon or conduct any physical development of the premises required for a building. To excavate, fill, drain and the line preparation for building shall also be considered "to erect."

EXTENDED DETENTION POND - An enhanced detention pond that provides both flood control and treatment of the first flush of stormwater runoff. Storage time for the first flush is a minimum of 48 hours. **[Added 5-1-99 ATM by Art. 9]**

FACADE-MOUNT ANTENNAS - One or more antennas or panels mounted on the facade of an existing building or structure, including accessory equipment and cables, if any, which facilitate the provision of wireless telecommunications services. **[Added 11-6-1997 STM by Art. 20]**

FAMILY - Any number of individuals living and cooking together on the premises as a single housekeeping unit.

FARM WITHOUT LIVESTOCK - Premises containing at least five acres which are used for gain in raising of agricultural products, including necessary farm structures and equipment. "Without livestock" means having no fur bearing animals, hogs or animals for hire; no more than one horse, cow, goat, or sheep; and no more than ten poultry. **[Added 3-25-1967 ATM by Art. 57]**

FIRST FLUSH **[Added 5-1-99 ATM by Art. 9]** - The volume generated by the first 1.25 inches of stormwater runoff. This first 1.25 inches of runoff carries the majority of accumulated pollutants from impervious surfaces. The first flush treatment volume in cubic feet ( $V_t$ ) is determined by the following formula:

$$V_t = (1.25/12 \text{ inches})(R_v)(\text{Site Area in square feet})$$

Where:

$$R_v = 0.05 + 0.009(I)$$

I = the % impervious area. Impervious area is defined as any manmade cover that is not vegetated. In residential areas, the % impervious is obtained from the TR-55 table Runoff Curve Numbers for Urban Areas, Residential District by Average Lot Size.

FLAG - Any fabric or similar lightweight material attached at one end of the material, usually to a staff or pole, so as to allow movement of the material by atmospheric changes and which contains distinctive colors, patterns, symbols, emblems, insignia or other symbolic devices. **[Added 5-2-1998 STM by Art. 29]**

**FLASHING SIGN** - A directly or indirectly illuminated sign, which exhibits changing light or color effect by any means so as to provide intermittent illumination, which includes the illusion of intermittent flashing light by means of animation. Also any mode of lighting, which resembles zooming, twinkling, or sparkling; does not include electronic message signs displaying text. **[Added 5-2-1998 STM by Art. 29]**

**FLOOR AREA, GROSS** - The sum of the gross horizontal area of the several floors of a building and its accessory buildings on the same lot, including the area of the basement not more than 50% below grade, roofed porches and roofed terraces. All dimensions shall be measured between exterior faces of the walls, with no deductions for hallways, stairs, closets, thickness of walls, columns, or other features. **[Amended 6-8-2002 ATM by Art. 7]**

**FLOOR AREA, NET** - The actual occupied area not including accessory unoccupied areas such as but not limited to hallways, stairs, atriums, closets, or thickness of walls. **[Added 6-8-2002 ATM by Art. 7]**

**FOREBAY** - A storage area provided near a BMP inlet to trap incoming sediments before they accumulate in a basin/pond BMP. **[Added 5-1-1999 ATM by Art. 9]**

**FREESTANDING SIGN** - Any sign not attached or part of any building, but separate and affixed in or upon the ground. **[Added 5-2-1998 STM by Art. 29]**

**GAME PRESERVE** - Premises used for hunting for a fee.

**GASOLINE SERVICE STATION** - Any building, land area or other premises or portion thereof used for the retail dispensing or sales of vehicular fuels, whether as the principal or accessory use. **[Added 5-2-1998 STM by Art. 29]**

**GOLF COURSE** - An unlighted area of at least 30 acres with nine or more standard holes and customary accessory buildings. Other golf facilities with less acreage or lighted facilities shall be considered as outdoor commercial recreation. **[Amended 12-10-1992 STM by Art. 1]**

**GRADE** - Construed to be the final ground elevation after construction. Earth mounding criteria for landscaping and screening is not part of the final grade for sign height computation. . **[Added 5-2-1998 STM by Art. 29]**

**HALO LIGHTING** - Light showing from the back of or from within a letter or graphic shape out towards the surface that the letter or graphic is mounted on without having any light visible through the face of the letter or graphic. **[Added 5-2-1998 STM by Art. 29]**

**HEIGHT** - The height of a wind turbine measured from natural grade to the tip of the rotor blade at its highest point, or blade-tip height. This measure is also commonly referred to as the maximum tip height (MTH). **[Added 5-4-2013 ATM by Art. 19]**

**HEIGHT OF SIGN** - The height of the sign shall be computed as the vertical distance measured from the base of the sign at grade to the top of the highest attached component of the sign. . **[Added 5-2-1998 STM by Art. 29]**

**HISTORIC OR COMMEMORATIVE PLAQUE** - Any building sign indicating the name of a building, the date of erection and incidental information about its construction. **[Added 5-2-1998 STM by Art. 29]**

**HOME IMPROVEMENT SIGN** - Any temporary sign which identifies and announces the construction company responsible for the home improvement of the property. **[Added 5-2-1998 STM by Art. 29]**

**HOME OCCUPATION** - A business or profession conducted in part or whole in a residence thereof. **[Added 3-25-1967 ATM by Art. 55]**

**HOSPITAL** - Facility for the care and treatment of patients as licensed by Massachusetts Department of Health. <sup>14</sup>

**HYDROLOGIC SOIL GROUP** - A soil characterization classification system defined by the U.S. Soil Conservation Service. Soils within the same group have the same runoff potential under similar storm and cover conditions. **[Added 5-1-1999 ATM by Art. 9]**

**IDENTIFICATION SIGN** - Any sign which is used to distinguish a site as determined by the owner or agent of the site. **[Added 5-2-1998 STM by Art. 29]**

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<sup>14</sup> Editor's Note: The former definition of "hotel," which immediately followed this definition, was deleted 4-16-1975 ATM by Art. 57.

**ILLUMINATED SIGN** - Any sign which contains an element designed to emanate artificial light internally or externally. **[Added 5-2-1998 STM by Art. 29]**

**IMPERVIOUS AREA** - The portion of the site that is covered by material that does not allow surface water to penetrate into the soil. **[Added 5-1-1999 ATM by Art. 9]**

**INTERNAL ILLUMINATION** - An internally illuminated graphic is one with the light source concealed or contained within the graphic itself and which becomes visible in darkness by shining through a surface. **[Added 5-2-1998 STM by Art. 29]**

**ISSUING AUTHORITY** - The Town of Fairhaven Building Commissioner or other person designated by the Fairhaven Board of Selectmen. **[Added 5-2-1998 STM by Art. 29]**

**JUNK** - Any article or material or collection thereof which is worn out, cast off or discarded and which is ready for destruction or has been collected or stored for salvage or conversion. Any article or material which unaltered or unchanged and without further reconditioning can be used for its original purpose as readily as when new shall not be considered "junk."

**JUNKYARD** - The use of any lot, whether inside or outside a building for the storage, keeping or abandonment of junk or scrap or discarded materials, or the dismantling, demolition or abandonment of automobile(s), or other vehicle(s), boats or machinery, or parts thereof.

**LEGALLY ESTABLISHED NONCONFORMING SIGN** - Any sign and its support structure lawfully erected prior to the effective date of this chapter which fails to conform to the requirements of this chapter. A sign which was erected in accordance with a variance granted prior to the adoption of this chapter and which does not comply with this chapter shall be deemed to be a legal nonconforming sign. A sign which was unlawfully erected shall be deemed to be an illegal sign. **[Added 5-2-1998 STM by Art. 29]**

**LIMOUSINE SERVICE** - The keeping and maintenance of motor vehicles for hire. **[Added 12-10-1992 STM by Art. 1]**

**LINEAL BUILDING FRONTAGE** - The length of a ground level straight line or lines parallel to and equaling the length of the building front that includes the main public entrances, the side of the building fronting on the principal roadway. In the case of a multi-unit development, the frontage of each separate building is additive for the purpose of determining permissible sign area. **[Added 5-2-1998 STM by Art. 29]**

**LIVESTOCK RAISING** - The keeping or raising of any furbearing animals, hogs or animals for hire or horses cows, goats, sheep or poultry. **[Added 3-25-1967 STM by Art. 57; amended 5-14-1977 ATM by Art. 42]**

**LOT** - A continuous parcel of land with legally definable boundaries.

**LOT, CORNER** - A lot which has an interior angles of less than 135° at the intersection of two street lines. A lot abutting a curved street shall be considered a "corner lot" if the tangents to the curve at the point of intersection of the front lot line and each side lot line form an interior angle of less than 135°.

**LOT COVERAGE** - The percentage of the horizontal area of a lot, which is covered or proposed to be covered, by impervious materials (for example, concrete, bituminous asphalt, oil and stone and the like), including but not limited to buildings, driveways, parking areas, walkways, tennis courts, swimming pools (above or below ground), hot tubs, uncovered patios, freestanding decks not used for access and egress to a building or other similar surfaces, but not including materials naturally occurring on site (for example, pre existing stone or ledge) and not include living plant materials.. All surfaces constructed of permeable materials (for example, gravel, pea-stone and the like) shall be excluded from the calculation of lot coverage. **[Added 2-11-2004 STM by Art. 14]**

**LOT FRONTAGE** - That portion of a lot fronting upon a street or public way, to be measured continuously along one street line between its side lot lines and their intersection with the street line.

**LOT, THROUGH** - An interior lot having frontage on two parallel or approximately parallel streets.

**MANSARD OR PARAPET SIGNS** - A sign permanently affixed to a wall or surface designed to protect the edge of a roof. **[Added 5-2-1998 STM by Art. 29]**



**MANUFACTURING** - **[Amended 5-5-1990 ATM by Art. 9]** Fabrication, assembly, finishing, packaging, processing or research, including the processing or preparation of food, but not including the processing or preparation of food for individual service.

- (1) For consumption on the premises;
- (2) For sale and delivery on the premises to the consumer for preparation for consumption on the premises, or
- (3) For sale and delivery by the processor or the preparer off the premises to the consumer for consumption at the point of delivery.

**MARINA** - **[Added 3-18-1968 STM by Art. 6]** Facilities and operations to accommodate as principal use:

- (1) Landing, launching and mooring of boats.
- (2) Minor repairs and servicing of boats and equipment only while afloat and to accommodate as accessory uses to above only.
- (3) Retail sale at dockside of boat supplies and of accessories and bait displayed and sold only within a building.
- (4) Renting of boats, accessories and fishing tackle.

**MARQUEE** - Any permanent roof-like structure projecting beyond a building or extending along and projecting beyond the wall of a building, generally designed and constructed to provide protection from the weather. **[Added 5-2-1998 STM by Art. 29]**

**MARQUEE SIGN** - A sign painted on, attached to, or consisting of interchangeable letters on the face of a permanent overhanging shelter which projects from the face of a building. **[Added 5-2-1998 STM by Art. 29]**

**MESSAGE CENTER** - A sign or portion thereof with characters, letters, or illustrations that can be changed or rearranged without altering the face or the surface of the sign. A message center sign may be either electronically or manually changed, provided that no moving letter signs in which the letters change more often than once per hour, except for time or temperature shall be permitted. **[Added 5-2-1998 STM by Art. 29]**

**METEOROLOGICAL (MET) TOWER**: a group of instruments (including anemometers and wind vanes) that collectively measure various meteorological parameters such as wind speed, wind direction, and temperature at various heights above the ground. **[Added 5-4-2013 ATM by Art. 19]**

**MOBILE HOME** - A movable or portable dwelling built on a chassis, connected to utilities and designed without necessity of a permanent foundation for year round living. **[Added 3-22-1969 ATM by Art. 56]**

**MOTEL OR HOTEL** - A building or group of buildings providing accommodations for compensation on a transient basis, but not meeting definition of "non-family accommodations". Accommodations having individual kitchen facilities (two or more of the following: stove, refrigerator, sink) shall be considered dwelling units. **[Added 4-16-1975 ATM by Art. 57]**

**MULTIPLE TENANT SITE** - Any site which has more than one tenant, and each tenant has a separate ground level exterior public entrance. **[Added 5-2-1998 STM by Art. 29]**

**MUNICIPAL USE** - Premises used for any operation by the town government except as elsewhere more specifically defined.

**MURAL** - A work of graphic art painted or applied to a building wall(s) which contains no advertising or logos. **[Added 5-2-1998 STM by Art. 29]**

**NACELLE**: the enclosure located at the top of a wind turbine tower that houses the gearbox, generator and other equipment. **[Added 5-4-2013 ATM by Art. 19]**

**NAME PLATE** - Any sign which designates the name, using plates, of the person(s) occupying the premises. **[Added 5-2-1998 STM by Art. 29]**

**NEIGHBORHOOD SIGN** - A permanent sign designed to identify a residential subdivision. **[Added 5-2-1998 STM by Art. 29]**

**NONCONFORMING USE OF LAND OR BUILDING** - A building or land lawfully occupied at the time of adoption of this chapter and of any amendments thereto by a use that does not conform to the adopted regulations of the district in which it is situated.

**NONFAMILY ACCOMMODATIONS** - Boardinghouses, lodging houses, guesthouses, tourist homes, dormitories or similar accommodations. Accommodations shall be considered hotels or motels if having a sign in excess of two square feet or other departure from residential character or if having specified term of residence less than one week, except where there is a resident family on the premises and accommodations for fewer than 10 nonresidents. Accommodations having individual kitchen facilities (two or more of the following: stove, refrigerator, sink) shall be considered dwelling units. **[Added 4-16-1975 ATM by Art. 57]**

**NURSING, CONVALESCENT, OR REST HOME** - Premises for the care of three or more persons as licensed by the Massachusetts Department of Public Health.

**OFFICIAL SIGNS AND NOTICES** - A sign erected and maintained within the public right-of-way, to indicate to the traveling public the route and distance to public accommodations, facilities, commercial services and points of scenic, historical, cultural, recreational, educational or religious interest. Such signs shall conform to all applicable state regulations regarding the placement of signs in public rights-of-way, and all traffic control signs shall be consistent with the Manual on Uniform Traffic Control Devices. **[Added 5-2-1998 STM by Art. 29]**

**OFF-PREMISES SIGN** - A sign unrelated to a business or a profession conducted, or to a commodity or service sold or offered, upon the premises where such sign is located. **[Added 5-2-1998 STM by Art. 29]**

**OPAQUE SIGN FACE** - The nontransparent face for an internally illuminated sign. Illumination shall be emitted only for the name, trademark, logo, distinctive symbol, or other similar device, thing or text used to identify a particular business, institution, activity, place, person, product or service. **[Added 5-2-1998 STM by Art. 29]**

**OPEN SPACE** - Unoccupied space free of all structures, parking, pavement or other conditions precluding landscaping, maintained with grass or other plant material.

**PARAPET (WALL)** - That portion of building wall that rises above the roof level. **[Added 5-2-1998 STM by Art. 29]**

**PARKING SPACE** - Space adequate to park a standard automobile, plus means of access. Marked spaces shall be not less than nine by 20 feet. Where spaces are not marked, each space shall be assumed to require 350 square feet. **[Added 3-22-1969 ATM by Art. 56]**

**PEAK DISCHARGE** - The maximum rate of flow during a storm, usually in reference to a specific design storm event (i.e. two-year, ten-year, twenty-five-year, one-hundred-year, twenty-four-hour storm event). **[Added 5-1-1999 ATM by Art. 9]**

**PERMANENT SIGN** - A nontemporary sign designed and intended for long-term use. **[Added 5-2-1998 STM by Art. 29]**

**PHILANTHROPIC INSTITUTION** - An endowed or charitably supported nonprofit religious or nonsectarian activity maintained for public or semipublic use.

**POLITICAL CAMPAIGN SIGN** - A temporary sign used in connection with a local, state or national election or referendum. **[Added 5-2-1998 STM by Art. 29]**

**POLITICAL SIGN** - Any sign posted by a person or group promoting a political issue, commenting on issues or promoting opinions. **[Added 5-2-1998 STM by Art. 29]**

**PORCH, COVERED** - Part of a structure having a roof and floor either with or without enclosing walls or windows.

**PORTABLE BILLBOARD SIGN** - Any sign which is manifestly designed to be transported, including by trailer or on its own wheels, even though the wheels of such sign may be removed and the remaining chassis or support is converted to an A or T frame sign or attached temporarily or permanently to the ground since this characteristic is based on the design of such a sign. **[Added 5-2-1998 STM by Art. 29]**

**PRICE SIGN** - A permanently mounted sign displaying the retailing cost of gasoline on the premises of a service station. **[Added 5-2-1998 STM by Art. 29]**

**PRINCIPAL BUILDING** - The building in which the principal primary use of the lot is conducted. Lots with multiple principal uses may have multiple principal buildings, but storage buildings, garages, and other clearly accessory uses shall not be considered principal buildings. **[Added 5-2-1998 STM by Art. 29]**

**PROJECTING SIGN** - Any sign which is affixed to a building or wall in such a manner that its leading edge extends more than 16 inches beyond the surface or such building or wall face. <sup>15</sup> **[Added 5-2-1998 STM by Art. 29]**

**PROMOTIONAL SALE SIGN** - A temporary banner promoting products, goods or services. **[Added 5-2-1998 STM by Art. 29]**

**PROPERTY OWNER** - Legal owner of property as officially recorded by Bristol County. **[Added 5-2-1998 STM by Art. 29]**

**PUBLIC BUILDING** - A non-residential building, owned by any governmental agency, which is primarily used for governmental purposes. **[Added 5-2-1998 STM by Art. 29]**

**PUBLIC NOTICES** - Official notices posted by public officers, employees or their agents in the performance of their duties, or as directed by such officers, employees or agents. **[Added 5-2-1998 STM by Art. 29]**

**PUBLIC STREET LINE** - A line demarcated by the nearest edge of pavement for a paved street. **[Added 5-2-1998 STM by Art. 29]**

**PUBLIC STREET RIGHT-OF-WAY** - The right-of-way for a public street. **[Added 5-2-1998 STM by Art. 29]**

**PUBLIC UTILITY** - Utility licensed by the Department of Public Works.

**PUBLIC UTILITY SERVICE AREA** - An area used by a utility for bulk storage, exposed equipment or truck parking.

**PUBLIC UTILITY SIGNS** - Warning signs, notices or markers which are customarily erected and maintained by public or privately owned public utilities as essential to their operations. **[Added 5-2-1998 STM by Art. 29]**

**PUMP ISLAND SIGN** - Any sign either affixed directly to a gasoline pump or otherwise attached to the pump or pump island. **[Added 5-2-1998 STM by Art. 29]**

**RADIO TRANSMISSION** - Premises used for the commercial transmission of radio or television, not including studios.

**REAL ESTATE SIGN** - Any temporary sign which announces the sale, rental or lease of property by the owner or real estate company. **[Added 5-2-1998 STM by Art. 29]**

**RECREATION, INDOOR COMMERCIAL** - Theater, bowling alley, video/pinball arcade, roller skating rink, ice skating rink or other commercial recreation or entertainment carried on wholly in an enclosed building. **[Amended 12-10-1992 STM by Art. 1]**

**RECREATION, OUTDOOR COMMERCIAL** - Drive-In theater, golf driving range, miniature golf course, pitch and putt, skate board park, bathing beach or other commercial recreation activities not more specifically defined elsewhere in this chapter. **[Amended 12-10-1992 STM by Art. 1]**

**REPRESENTATIONAL SIGN** - A three-dimensional sign built so as to physically represent the object advertised. **[Added 5-2-1998 STM by Art. 29]**

**RESIDENTIAL SIGN** - Any sign located in a district zoned for residential uses. **[Added 5-2-1998 STM by Art. 29]**

**ROADSIDE STAND, PERMANENT** - A structure open to the weather left in place year round, used for seasonal sale of raw produce the major portion of which is raised on the premises.

**ROADSIDE STAND TEMPORARY** - A structure as above, but removed for not less than six months out of the year.

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<sup>15</sup> Editor's note: This definition also includes drawings, which help illustrate its provisions. Said drawings are found in Appendix B at the end of this chapter.

**ROOF** - The exterior surface and its supporting structure on the top of a building or structure. The structural make-up of which conforms to the roof structures, roof construction and roof covering sections of the Uniform Building Code. **[Added 5-2-1998 STM by Art. 29]**

**ROOF LINE** - The uppermost edge of the roof or in the case of an extended facade or parapet, the uppermost height of said facade. **[Added 5-2-1998 STM by Art. 29]**

**ROOF SIGN** - Any sign erected and constructed wholly on and above the roof of a building, supported by the roof structure, and extending vertically above the highest portion of the roof. <sup>16</sup> **[Added 5-2-1998 STM by Art. 29]**

**ROOF SIGN, INTEGRAL** - Any building sign erected or constructed as an integral or essentially integral part of a normal roof structure of any design so that no part of the sign extends vertically above the highest portion of the roof and so that no part of the sign is separated from the rest of the roof by a space of more than six inches. <sup>17</sup> **[Added 5-2-1998 STM by Art. 29]**

**ROTATING SIGN** - A sign or portion of a sign which turns about on an axis. **[Added 5-2-1998 STM by Art. 29]**

**SCHOOL, NURSERY** - A school designed to provide daytime care or instruction for two or more children from two to five years of age, inclusive, and operated on a regular basis.

**SCHOOL, OTHER COMMERCIAL** - An educational facility, other than a nursery school or those covered by MGL c 40A § 3.

**SCHOOL, OTHER** - An educational institution which is religious, sectarian, denominational or public.

**SCHOOL, PRESCHOOL** - Includes child-care facility, pre-school and school-age child-care facility. **[Amended 12-10-1992 STM by Art. 1]**

**SERVICE AREA CANOPY** - Any structural protective cover that is not enclosed on any of its four sides and is provided for the service area designated for the dispensing or installation of gasoline, oil, antifreeze, headlights, wiper blades and other similar products and the performance of minor services for customers as related to said dispensing or installation. **[Added 5-2-1998 STM by Art. 29]**

**SERVICE AREA CANOPY SIGN** - Any sign that is part or attached to the service area canopy. **[Added 5-2-1998 STM by Art. 29]**

**SHADOW FLICKER**: the moving shadows cast by rotating wind turbine blades that cause a flickering effect. **[Added 5-4-2013 ATM by Art. 19]**

**SHIMMERING SIGNS** - A sign which reflects an oscillating, sometimes distorted, visual image. **[Added 5-2-1998 STM by Art. 29]**

**SIGN** - Any structure, fixture, placard, announcement, declaration, device, demonstration or insignia used for direction, information, identification or to advertise or promote any business, product, goods, activity, services or any interests. <sup>18</sup> **[Added 3-25-1967 ATM by Art. 56; Amended 5-2-1998 STM by Art. 29]**

**SIGN FACE** - The surface of the sign upon, against or through which the message of the sign is exhibited. **[Added 5-2-1998 STM by Art. 29]**

**SIGN STRUCTURE** - Any structure including the supports, uprights, bracing and framework which supports or is capable of supporting any sign. **[Added 5-2-1998 STM by Art. 29]**

**SIGN SURFACE AREA** - As computed in § 198-26F. <sup>19</sup> **[Added 5-2-1998 STM by Art. 29]**

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<sup>16</sup> Editor's note: This definition also includes drawings, which help illustrate its provisions. Said drawings are found in Appendix B at the end of this chapter.

<sup>17</sup> Editor's note: This definition also includes drawings, which help illustrate its provisions. Said drawings are found in Appendix B at the end of this chapter.

<sup>18</sup> Editor's note: The former definitions of "sign, accessory," "sign, area of" and "sign, nonaccessory" were deleted 5-2-1998 STM by Art. 29.

<sup>19</sup> Editor's note: This definition also includes drawings, which help illustrate its provisions. Said drawings are found in Appendix B at the end of this chapter.

**SITE** - A plot or parcel of land, or combination of contiguous lots or parcels of land, which are intended, designated, and/or approved to function as an integrated unit. **[Added 5-2-1998 STM by Art. 29]**

**SPANDREL** - A roof-like structure that covers the gasoline pump dispenser below a service area canopy and which is a lighting source for the dispensing area, serves to identify the gasoline pumps by numerical designation, and may display signage. **[Added 5-2-1998 STM by Art. 29]**

**SOLAR PHOTOVOLTAIC ENERGY FACILITIES (SPEF) - LARGE-SCALE GROUND-MOUNTED:** A solar photovoltaic system that is structurally or ballast mounted on the ground and has a minimum nameplate capacity of 250 kW (AC), which is designed to supply all of its electrical output for use off site. **[Added 5-4-2013 STM by Art. 8]**

**SOLAR PHOTOVOLTAIC ENERGY FACILITIES (SPEF) - ON-SITE:** A solar photovoltaic system that is structurally or ballast mounted on the ground at a location where other uses of the underlying property occur and the electrical output is primarily for use on site. **[Added 5-4-2013 STM by Art. 8]**

**SOLAR PHOTOVOLTAIC ENERGY FACILITIES (SPEF) - RATED NAMEPLATE CAPACITY:** The maximum rated output of electric power production of the Photovoltaic system in Direct Current (AC). **[Added 5-4-2013 STM by Art. 8]**

**SPANDREL SIGN** - any sign that is a part of or attached to the spandrel. **[Added 5-2-1998 STM by Art. 29]**

**SPORTSMAN'S CLUB** - A club whose primary purpose are conservation, hunting or fishing.

**STABLE PUBLIC** - A building in which two or more horses kept for remuneration hire or sale.

**STREET** - Either a public way or a way which the Town Clerk certifies is maintained and used as public way or a way shown on a plan therefore approved in accordance with the Subdivision Control Law,<sup>20</sup> or a way in existence when the Subdivision Control Law became effective in Fairhaven, having in the opinion of the Planning Board sufficient width, suitable grades and adequate construction in relation to the proposed use of land abutting thereon or served thereby, and for the installation of municipal services to serve such land and the building erected or to be erected thereon. Interstate Route 195 shall not be considered a "street" for the purpose of determining whether a yard constitutes a front yard.

**STREET GRADE** - The officially established grade of the street upon which a lot fronts. If there is no officially established grade, the existing grade of the street shall be taken at "street grade."

**STRINGER** - A line of string, rope, cording, or an equivalent to which is attached a number of pennants. **[Added 5-2-1998 STM by Art. 29]**

**STRUCTURE** - Anything constructed or erected, the use of which requires location on the ground, or attached to something located on the ground, except a boundary wall or fence.

**SUBSTANTIAL EVIDENCE:** such evidence as a reasonable mind might accept as adequate to support a conclusion. **[Added 5-4-2013 ATM by Art. 19]**

**SUSPENDED SIGN** - Any building sign that is suspended from the underside of a horizontal plane surface and is connected to this surface. <sup>21</sup> **[Added 5-2-1998 STM by Art. 29]**

**SURFACE WATER QUALITY CLASSIFICATIONS** - Waters designated for protection under 314 CMR 4.04 (2). **[Added 5-1-1999 ATM by Art. 9]**

**SWIMMING POOL** - Any constructed pool, located above or below the ground, whether portable or fixed, used or capable of being used for swimming, wading or bathing purposes. Pools having a depth of four feet or more and having a capacity of 400 cubic feet or more shall be considered structures. **[Added 3-25-1967 ATM by Art. 57]**

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<sup>20</sup> Editor's note: See MGL c 41 section 81K et. Seq.

<sup>21</sup> Editor's note: This definition also includes drawings, which help illustrate its provisions. Said drawings are found in Appendix B at the end of this chapter.

**TEMPORARY SIGN** - Any sign or sign structure which is not permanently affixed or installed, and is intended to be displayed for a limited period only. Examples of such signs include, but are not limited to, the following: real estate, construction, special event, political, garage sale, home improvement/remodeling, model home and seasonal (holiday) signs, banners and portable billboard signs. **[Added 5-2-1998 STM by Art. 29]**

**TEMPORARY STRUCTURES** - An accessory tent or construction shanty to be used for less than one year. <sup>22</sup>

**TOTAL SITE SIGNAGE** - The maximum permitted combined area of all on-premise signs allowed on a specific property. **[Added 5-2-1998 STM by Art. 29]**

**TRANSPORTATION TERMINAL** - Premises for the parking and/or servicing of commercial vehicles.

**TR-20** - A NRCS hydrology procedure for complex watersheds. The computer program calculates runoff volumes, peak discharges and hydrographs at various locations in the watershed. Design storms and actual rainfall events can be analyzed. **[Added 5-1-99 ATM by Art. 9]**

**TR-55** - presents simplified hydrology procedures to calculate runoff volumes and peak discharge in small watersheds. It is based on TR-20 hydrology procedures and actual TR-20 computer runs. **[Added 5-1-99 ATM by Art. 9]**

**USE** - The specific purpose for which land or a building is designed, arranged, intended or for which it is or may be occupied or maintained. The term "permitted use" or its equivalent shall not be deemed to include any nonconforming use.

**UTILITY TRAILER** - A towed vehicle for transportation of goods or animals but not intended for human occupancy. **[Added 3-22-1969 ATM by Art. 56]**

**VISIBLE** - Capable of being seen by a person of normal visual acuity (whether legible or not) without visual aid. **[Added 5-2-1998 STM by Art. 29]**

**WALL** - Any structure which defines the exterior boundaries or courts of a building or structure and which has a slope of 60° or greater with the horizontal plane. **[Added 5-2-1998 STM by Art. 29]**

**WALL SIGN** - Any building sign attached parallel to, but within 16 inches of a wall, painted on the wall surface of, or erected and confined within the limits of an outside wall of any building or structure, which is supported by such wall or building, and which displays only one sign surface. <sup>23</sup> **[Added 5-2-1998 STM by Art. 29]**

**WAREHOUSE** - Indoor storage of goods for distribution but not for sale on the premises.

**WHOLESALE** - Sale of commodities in quantity for resale or further processing.

**WIND ENERGY FACILITY (WEF)**: all equipment, machinery and structures utilized in connection with wind-generated energy production and generation, including related transmission, distribution, collection, storage or supply systems whether underground, on the surface, or overhead and other equipment or byproducts in connection therewith and the sale of the energy produced thereby, including but not limited to, wind turbine (rotor, electrical generator and tower), anemometers (wind measuring equipment), transformers, substation, power lines, control and maintenance facilities, site access and service roads. **[Added 5-4-2013 ATM by Art. 19]**

**WIND ENERGY FACILITY (WEF) - BUILDING INTEGRATED**: a WEF shall be considered to be building integrated if it is designed to be permanently mounted on a building or other inhabitable structure. This definition applies to wind turbines of any capacity that are designed to be operated in direct contact with a building. This definition also covers, for the purposes of this zoning provision, other wind energy facilities primarily used for land-based applications which may be permanently mounted and operated on a building. **[Added 5-4-2013 ATM by Art. 19]**

**WIND ENERGY FACILITY (WEF) - ON-SITE**: a WEF that will generate electricity to provide for the on-site load and may be grid-tied with a total rated nameplate capacity not to exceed 200kW. **[Added 5-4-2013 ATM by Art. 19]**

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<sup>22</sup> Editor's note: The former definition of "tourist home," which immediately followed this definition, as added 3-25-1967 ATM by Art. 57, was deleted 4-16-1975 by Art. 57. The former definitions of "trailer" and "trailer park" were deleted 3-22-1969 ATM by Art. 56.

<sup>23</sup> Editor's note: This definition also includes drawings, which help illustrate its provisions. Said drawings are found in Appendix B at the end of this chapter.

**WIND ENERGY FACILITY (WEF) - RATED NAMEPLATE CAPACITY:** the maximum rated output of electric power production equipment. This output is typically specified by the manufacturer with a nameplate attached on the equipment. **[Added 5-4-2013 ATM by Art. 19]**

**WIND ENERGY FACILITY (WEF) - SMALL WIND ENERGY SYSTEM:** all equipment, machinery and structures utilized in connection with the conversion of kinetic energy of wind into electrical power. This includes, but is not limited to, storage, electrical collection and supply equipment, and one or more wind turbines, which have a total rated nameplate capacity of not more than 10kW. **[Added 5-4-2013 ATM by Art. 19]**

**WIND ENERGY FACILITY (WEF) - UTILITY SCALE:** a commercial WEF, where the primary use of the facility is electrical generation to be sold to the wholesale electricity markets. **[Added 5-4-2013 ATM by Art. 19]**

**WINDOW SIGN** - Any building sign, pictures, symbol or combination thereof, designed to communicate information about an activity, business, commodity, event, sale or service, that is placed inside a window or upon the window panes or glass and is visible from the exterior of the window. **[Added 5-2-1998 STM by Art. 29]**

**WIRELESS COMMUNICATION FACILITY** - A freestanding tower or monopole, or an antenna array attached to the roof or highest point of an existing building or structure, including accessory antennas, structures, cables and equipment, if any, which facilitate the provision of wireless communication services. **[Added 11-6-1997 STM by Art. 20]**

**WIRELESS COMMUNICATION SERVICES** - The provision of the following types of services: cellular telephone service, personal communications and enhanced specialized mobile radio service. **[Added 11-6-1997 STM by Art. 20]**

**YARD** - A unoccupied space, open to the sky, on the same lot with the building or structure.

**YARD, FRONT** - The required open unoccupied space within the lot extending the full width of the lot and located between the street line and the minimum district “front yard” requirement. Eaves and stairs are exempt from this requirement. **[Amended 12-10-1992 STM by Art. 1]**

**YARD, REAR** - The required open unoccupied space within the lot extending the full width of the lot and located between the rear line of the lot and the minimum district “rear yard” requirement. Eaves and stairs are exempt from this requirement. **[Amended 12-10-1992 STM by Art. 1]**

**YARD, SIDE** - The required open unoccupied space extending from the side lot line the full width of the minimum district side yard requirement and located between the minimum district front and rear yard requirement. Eaves and stairs are exempt from this requirement. **[Amended 12-10-1992 STM by Art. 1]**

## APPENDIX A

### REPORT ON FINDINGS CONCERNING IMPACTS OF SEXUALLY ORIENTED BUSINESSES [Adopted by Art. 25, 11-23-1998 STM]

The First Amendment to the United States Constitution and Article 16 of the Declaration of Rights of the Massachusetts Constitution guarantee to people the right of freedom of expression. Therefore, federal state and local governments have no power to restrict expression because of its message, its ideas, its subject matter, or its content except in very rare circumstances. However, governments can adopt content-neutral regulations, which are aimed at reducing or eliminating the harmful secondary effect, but not the message or content, of the materials involved.

The town of Fairhaven's Planning Board notes that the both the United States Supreme Court and the Massachusetts Supreme Judicial Court have found that sexually oriented businesses are protected by the First and Fourteenth Amendments to the United States Constitution and Article Sixteen of the Declaration of Rights of the Massachusetts Constitution. The Planning Board also notes that the US Supreme Court in *Young v. American Mini-Theatres*, 427 U.S. 50 (1976) upheld a community's ability to regulate the location of sexually oriented businesses through zoning in order to prevent blight and reduce crime. The prevention of blight and reduction in may be the subject of content-neutral regulation which bears a rational nexus to substantial governmental interests.

In *City of Renton, et al v. Playtime Theaters, Inc., et al*, 475 U.S. 35 (1986) it was held that content neutral time, place and manner regulations on sexually oriented businesses are acceptable. In *Renton*, as in *Young*, the court upheld regulations on adult entertainment businesses which were designed to prevent crime, protect the city's retail trade, and maintain property values. While the courts have held that a total ban on adult entertainment businesses would be unconstitutional, in *Renton*, the court held that the city is not required to guarantee the best commercial locations for sexually oriented businesses. However, the court did note that in order to be valid regulation must provide potentially available sites.

In the *Renton* decision the Supreme Court held that the First Amendment does not require a municipality to conduct new studies, or produce evidence independent of that already generated by other municipalities, so long as whatever evidence the municipality relies on is believed to be relevant to the problem that is addressed. On February 10, 1998 the Fairhaven Planning Board reviewed a number of case studies highlighting the social and economic effects of sexually oriented businesses in other communities across the country. These case studies address issues such as the relationship between sexually oriented businesses and crime, property values, and property turn-over. The following summarizes the findings of these studies:

PHOENIX ARIZONA - Increase in crime, especially sexually oriented crimes were reported. Sex offenses were 506% higher in neighborhoods where sexually oriented businesses were located. Phoenix Planning Department 1979.

TUCSON ARIZONA - Activities at adult entertainment establishments were studied. Activities reported included illegal sexual activities, customers exposing themselves, underage dancers, masturbation in peepshows and anonymous sex acts being facilitated through such devices as "glory holes." Tucson Police Department 1990.

GARDEN GROVE, CA - Increases in crime were directly related to adult businesses. For instance 36% of all crime on Garden Grove Boulevard were linked to the seven adult businesses in the area. Real estate values were also found to be affected by adult uses, with depreciation of both residential and commercial property values. Single family homes were found to suffer the greatest impacts. Survey conducted from police records and survey of real estate professionals, 1991.

LOS ANGELES - Real estate values data was not conclusive, however realtors and appraisers noted that the proximity of adult uses to residential properties decrease market value. City police statistics found that more crime occurred in areas where sexually oriented businesses were concentrated than elsewhere in the city. City Planning Department 1977.



WHITTIER CALIFORNIA - A higher turnover of property in the adult business area was recorded (57% of homes compared to 19% for the non-adult business areas). The overall crime rate was also noted to increase with a before/after study showing a 102% increase in crime near adult businesses versus an 8.3% increase in the entire city. City staff for the City Council, 1978.

INDIANAPOLIS - An increase in crime over control areas was found. Commercial areas with sexually oriented businesses had a lower increase in crime rate than residential areas near sexually oriented businesses. It was also found that real estate values increase at lower rates near sexually oriented businesses than in control areas or city wide. Department of Metropolitan Development 1984.

MINNEAPOLIS - Report provides a notation of increased crime and lower property values but this data is not adequately documented. Minnesota Crime Prevention Center 1980.

CLEVELAND - The Cleveland Police Department analyzed crime statistics by census tracts. The analysis indicated a much higher crime rate in census tracts with sexually oriented businesses than in tracts without the uses. The study also notes the impacts of concentrating sexually oriented businesses, for instance the city's largest census tract by population, with no sexually oriented businesses had only 14 robberies, while in a tract with only 730 people but five sexually oriented businesses there were 136 robberies. Cleveland Police Department 1977.

OKLAHOMA CITY - A survey of 100 realtors and appraisers in Oklahoma City, 34 responding, results of the survey found that 32% felt that an adult bookstore within one block of a residential area would decrease home values by at least 20%; 76% said that an adult bookstore would negatively effect other businesses within one block. The study noted that residential properties would be more negatively affected than business properties. Oklahoma City Community Development Office, 1986.

AMARILLO TEXAS - Police records were studies to gauge the impacts of concentrating sexually oriented businesses. The study showed that areas of concentration had a crime rate 2 ½ time the city average. Amarillo Texas Planning Department 1977.

AUSTIN TEXAS - This study found that sexually oriented crime was 177% - 482% higher in areas with sexually oriented businesses than the city average. The study also found that areas with two sexually oriented businesses experienced a crime rate 66% higher than in areas with only one. A survey found that 88% felt that a sexually oriented business within one block decreased residential property values, 33% said that it decreased business property values. The realtors also noted that the presence of such businesses reflected a neighborhood in decline, making financing more difficult. Office of Land Development Services, 1986.

HOUSTON TEXAS - This study presents the hearing testimony oriented to ensuring that the First Amendment Rights of sexually oriented businesses were protected. Houston City Council 1983.

SEATTLE WA - This study noted an increasing number of complaints to police and petitions to the Seattle City Council regarding an increased number of cabarets. Protests included decreases in property values, increase in insurance rates, and increases in crime. Department of Construction and Land Use, 1989.

In addition to these studies, the Board of Selectmen of the Town of Fairhaven, during a licensing hearing for a proposed expansion of use by an existing sexually oriented business within the town reviewed reports of the Rockingham County NH, County Attorney's Office related to findings at several sexually oriented businesses in Portsmouth and Seabrook New Hampshire. The findings from these studies included instances of masturbation, disposal of used condoms, and the presence of peepholes.

The town of Fairhaven's 1996 Master Plan recommends that the Planning Board take steps to preserve the town's character. In addition, the purpose of the town's zoning bylaw includes:

- A. To promote the health, safety, convenience and general welfare of the inhabitants of the town of Fairhaven.
- C. To improve and beautify the town.

- G. To conserve the value of land and buildings, including the conservation of natural resources and the prevention of blight and pollution of the environment.
- H. To encourage the most appropriate use of land throughout the town.

It is the responsibility of the Fairhaven Planning Board to develop zoning provisions to carry out the goals of the Master Plan and to implement the purpose of the Zoning Bylaw. Given the findings from the case studies from other municipalities cited above regarding the effects and impacts of sexually oriented businesses it is clear that these uses:

- engender increased crime, particularly in their immediate vicinities, and that the incident of crime increase as these uses are concentrated;
- have an adverse impact on health as they relate to illicit sexual activities;
- have an adverse impact on property values; and
- have an adverse impact on the business climate in their vicinity.

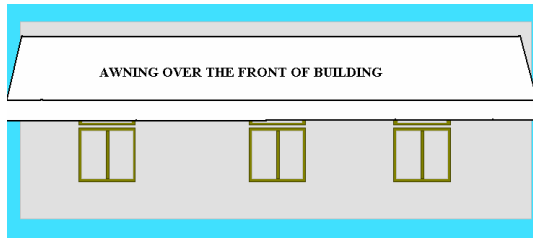
In order to protect the health, safety and general welfare of the inhabitants of the Town of Fairhaven, and to prevent blight, the Planning Board of the Town of Fairhaven finds that it is necessary to regulate the potential adverse impacts of sexually oriented businesses through a zoning regulation that ensures that these uses are:

- not concentrated into one location;
- are located adequate distances away from residential properties; and
- are located adequate distances away from churches, schools, and playgrounds.

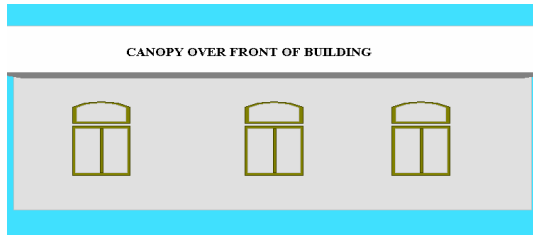
## APPENDIX B

**Illustrations to accompany  
§ 198-26, Sign Regulations  
[Added 3-25-1967 ATM by Art. 56; amended 3-  
16-1974 by Art. 91, Replaced 5-2-1998 STM Art.  
29]**

### AWNING SIGN

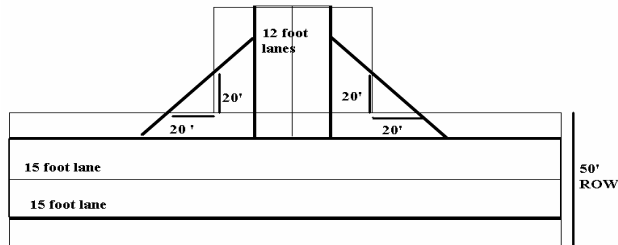


### CANOPY SIGN

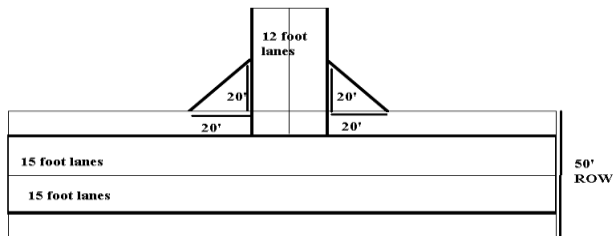


### CLEAR VIEW TRIANGLE AREA.

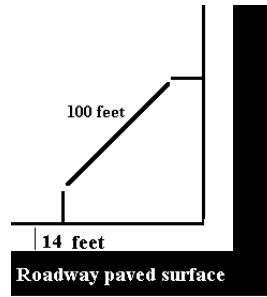
1. On a corner lot



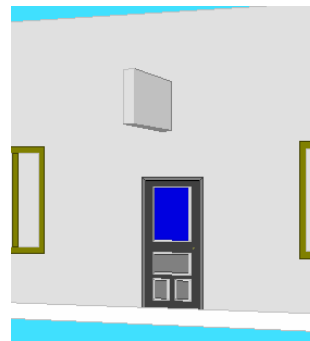
2. On a lot which has a driveway or is next to a lot which has a driveway



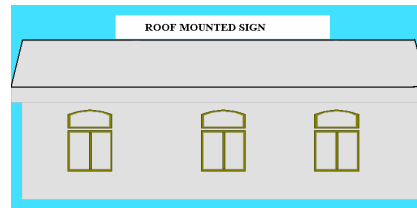
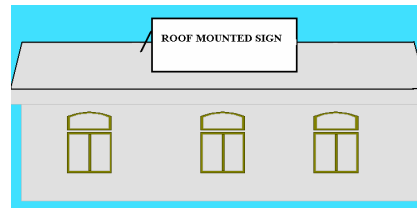
3. Orientation of signs on corner lots or through lots.



### PROJECTING SIGN



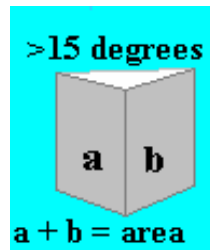
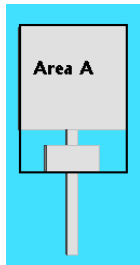
### ROOF SIGN



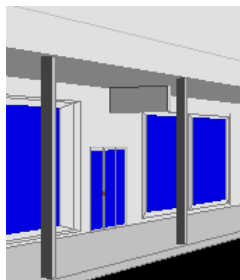
### ROOF SIGN, INTEGRAL



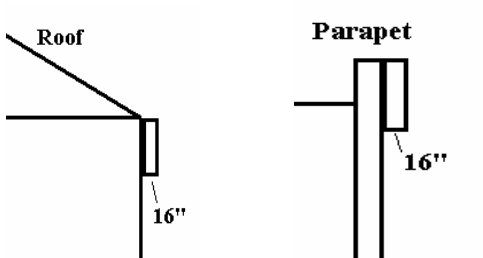
SIGN SURFACE AREA:



SUSPENDED SIGN



WALL SIGN



## APPENDIX C

### Wind Energy Facilities

#### Annual Operations and Maintenance Report for (name of Facility)

Filing of the Annual Operations and Maintenance Report with the Planning Board is a condition of the special permit issued to the operator of a Wind Energy Facility (WEF) in each year the facility is in operation. All information is required to be completed and delivered annually to the office by the anniversary date of operation of each year.

|   |  |
|---|--|
| WEF<br>map and lot number   |  |
| Name of site operator   |  |
| Address of site operator  |  |
| Contact information   |  |
| Liability Insurance Carrier   |  |
| Status of any<br>required bonds   |  |
| Recommended<br>manufacture's maintenance<br>completed. Warranty still in<br>effect? |  |
| Roads and stormwater<br>Status  |  |
| Changes to structure<br>or equipment  |  |
| Number and nature of<br>complaints received directly<br>to operator.                |  |
| Board of Health Operational<br>Noise Monitoring Report<br>per §198-29.5 L (5) (d).  |  |
| Avian Impact Monitoring<br>Report per §198-29.5 L (7)                               |  |
| Property taxes outstanding  |  |